

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1878

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

----- X

UNITED STATES OF AMERICA, :

Appellee :

-against- :

THEODORE KOSS and KOSS SECURITIES  
CORPORATION, :

Defendants-Appellants :

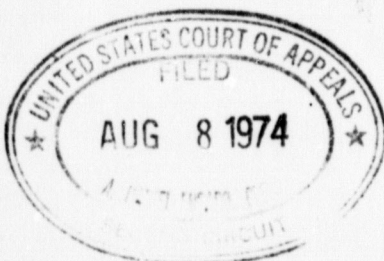
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APPENDIX TO BRIEF

\* \* \* ----- X

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## TESTIMONY

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- 9.25.73 Filed Indictment: 18:371-conspiracy to violate federal security laws (Count 1); 15:77q, 77x, 78j(b), 78ff, 78o(c)(2) & 18:2-fraud in the offer and sale of securities; fraud in connection with purchase and sale (Counts 2-4); 18:1341-using the mails to defraud in a scheme to raise stock prices (Counts 5-11); 18:1001-making false statements before S.E.C. (Counts 12-13).
- 10.9.73 ALL DEFENDANTS (Attys present) Plead not guilty.
- 10.18.73 THEODORE KOSS-filed affidavit and notice of motion for bill of particulars, inspection, severance, inspection of grand jury minutes and to dismiss; filed memorandum in support of motions
- 12.13.73 Filed Govt. memorandum of law
- 1.24.74 THEODORE KOSS. filed supplemental affidavit of Morris Weissberg in support of motion for bill of particulars, for discovery and inspection of documents and grand jury minutes, to dismiss the indictment, etc.
- 2.26.74 THEODORE KOSS. filed memo endorsed on motion dtd 10/18/73. Motion for bill of particulars denied in part-granted in part; motion for discovery, denied; motion to inspect exculpatory evidence, The govt shall apprise the movants of the existence of such material as soon as it is aware of it. Motion for severance will be disposed of in a separate memorandum. Motion to inspect grand jury minutes denied. So ordered. METZNER, J.
- 3.12.74 filed OPINION #40445. The motion by eleven defendants for severance is denied for reasons indicated, without prejudice to renewal if the proceedings at trial justify such action.
- 3.28.74 THEODORE KOSS. filed affidavit in support of application to appoint Morris Weissberg atty. Filed affidavit in support of application for appointment of counsel.
- 3.29.74 filed Govt Order and affidavit for an order that Counts 12 & 13 of the indictment be tried separately from Counts 1 thru 11, and this Court having granted such motion by Order dtd 3/12/74 and the Govt having moved for reconsideration with respect to Count 13 of the indictment herein, and this Court have reconsidered the matter, and defts not having objected, it is hereby ordered that the motion for a trial of Count 13 of the indictment herein separate from counts 1 thru 11 is denied. METZNER, J.
- 4.2.74 filed Govt third supplemental bill of particulars
- 4.5.74 filed pltfs 4th supplemental bill of particulars
- 4.17.74 filed Govt affidavit for the purpose of clarifying Count 13 of indictment for defts. Theo.Koss & Koss Securities Co.
- 4.17.74 filed Govt second supplemental bill of particulars

- 4.17.74 Jury empaneled and sworn. Trial begun as to Theodore Koss; Koss Securities Corp.; Erwin Layne; William McGee; Stephen Hagler; and severed as to Samuel Weisman and Harold Lassoff.
- 4.18.74 Trial continued, METZNER, J.
- 4.19.74 Trial continued, Juror #11 is replaced by Alt. Juror #1. METZNER, J.
- 4.22.74 Trial continued, METZNER, J.
- 4.23.74 Trial continued, Juror #5 is replaced by Alt. Juror #2. METZNER, J.
- 4.24.74 Trial continued, METZNER, J.
- 4.25.74 Trial continued, METZNER, J.
- 4.26.74 Trial continued, METZNER, J.
- 4.29.74 Trial continued, METZNER, J.
- 5.6.74 Trial continued. The court directs that alternate juror Howard Perry is excused from any further jury service. METZNER, J.
- 5.7.74 Govt. rests. The Govt. consents to strike the following from the means of conspiracy as to Koss and Koss Security 21(a), 21(h), 21(j) 21(L), 21(n). Defts. Koss and Koss Securities move to dismiss counts 6, 7, 9 and 10 - Granted. All other motions are denied. METZNER, J.
- 5.8.74 Trial continued.
- 5.9.74 Trial continued.
- 5.10.74 Trial continued and concluded Jury verdict 3:15 P.M. Deft. Koss GUILTY on counts 1, 2, 3, 4, 5, 8, 11 and 13. All motions to be submitted on paper. Presentence report ordered. Sentence June 14, 1974. Bail continued. Jury polled. Deft. Koss Securities Cor. GUILTY on counts 1, 2, 3, 4, 5, 8 and 11. All motions to be submitted on papers. Presentence report ordered. Sentence June 14, 1974. Bail continued. Jury polled.
- 6.7.74 THEODORE KOSS & KOSS SECURITIES CORP. Filed motion for new trial and memorandum in support of motion for new trial Rule 33 R.C.P.
- 6.14.74 THEODORE KOSS (atty present) filed JUDGMENT. It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year on Count 1. Imposition of sentence is suspended on the remaining counts and the defendant is placed on probation for a period of Three (3) Years to commence upon expiration of sentence on count One and subject to the standing proba-



- 6.14.74 tion order of this Court. The defendant is continued on present bail and to post new bail pending appeal. METZNER, J. (Copies issued).
- 6.14.74 KOSS SECURITIES CORP. (atty present). Filed JUDGMENT. It is adjudged that the defendant is fined the sum of \$1,500.00 on Count One. The fine is to be paid within Thirty (30) days from the date of this order. Imposition of sentence is suspended on the remaining counts. METZNER, J. (Copies issued).
- 6.17.74 THEODORE KOSS. Filed Govt. memo of law in opposition to motion for new trial
- 6.24.74 THEODORE KOSS & KOSS SECURITIES CORP. Filed notice of appeal from the final judgment entered on 6/14/74.
- 6.24.74 Filed Memo and Order--The application to proceed on appeal in forma pauperis is denied on the basis that the deft's financial condition does not justify such relief. So ordered. METZNER, J.

SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

No.

Theodore Koss

73 or. 903

On this 14th day of June, 1974 came the attorney for the government and the defendant appeared in person and<sup>1</sup> by Morris Weissberg Esq.

IT IS ADJUDGED that the defendant upon his plea of<sup>2</sup> not guilty and a verdict of guilty by a jury has been convicted of the offense of (see rider attached)

in counts (1)(2)(3)(4)(5)  
as charged<sup>3</sup> (8)(11) and (13)  
and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One(1) Year on count One. Imposition of sentence is suspended on the remaining counts and the defendant is placed on probation for a period of Three(3) Years to commence upon expiration of sentence on count One and subject to the standing probation order of this Court.

The defendant is continued on present bail and to post new bail pending appeal.

MICROFILM

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Charles M. Metzger

United States District Judge.

Raymond J. Bayfield

Clerk.

<sup>1</sup>Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel. <sup>2</sup>Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. <sup>3</sup>Insert "in count(s) number" if required. <sup>4</sup>Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. <sup>5</sup>Enter any order with respect to

NCC



The defendant has been convicted of the offense of unlawfully, with intent to defraud, the use and instruments of transportation in interstate commerce and the mails, directly and indirectly did employ a device, scheme and artifice to defraud. (Title 15, U.S.C. Sections 77q, 77x and Title 18, U.S.C., Section 2.) and did use and employ manipulative and deceptive devices and contrivances in contravention of Rule 10b-5 (17 C.F.R. Section 240. 10b-5) of the Securities and Exchange Commission. (Title 15, U.S.C., Sections 78j(b), 78ff and Title 18, U.S.C., Section 2.) and did induce the sale of stock by fraudulent, deceptive and manipulative acts and practices in contravention of Rule 15(c) 2-4 (17 C.F.R. 240. 15(c) 2-4) of the Securities and Exchange Commission and failed to deposit monies from underwritings in a separate bank account for persons who had a beneficial interest in. (Title 15, U.S.C., Sections 78o(c)(2) and 78ff and Title 18, U.S.C., Section 2.) and did devise a scheme to defraud purchasers and obtain monies and property from said purchasers by means of false and fraudulent pretenses, representations and promises. (Title 18, U.S.C., Section 1341 and 2.) and did make, use and submit false writing to wit, documents reflecting purchases and sale of stock. (Title 18, U.S.C., Section 1001.) and did conspire, combine, confederate and agree with others to violate Title 15, U.S.C. Sections 77q(a), 77(x), 78j(b) and 78ff and rule 10b-5 (17 C.F.R. 240. 10b5 of the Securities and Exchange Act, and Title 18, U.S.C., Section 1341. (Title 18, U.S.C., Section 371.)

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<sup>1</sup>Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant stated that he waived the right to the assistance of counsel." <sup>2</sup>Insert (1) "guilty and the court there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty." <sup>3</sup>Insert "in count(s) number \_\_\_\_\_ as the case may be." <sup>4</sup>Insert sentence or sentences, specifying counts if any; (2) whether sentences are to run consecutively and, if consecutively, when each term is to begin with reference to termination of previous sentence; (3) whether defendant is to be further imprisoned or discharged as provided by law. <sup>5</sup>Enter any other outstanding unserved sentence; (2) whether defendant is to be further imprisoned or discharged as provided by law. <sup>6</sup>Enter any recommendation of the court to recommend a particular institution.

COUNT ONE

The Grand Jury charges:

1. From on or about the first day of November, 1970 and continuously thereafter, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, THEODORE KOSS, KOSS SECURITIES CORPORATION, STEPHEN ZADUS, ROBERT SANTIS, HERBERT SHULMAN, STEVEN ADLMAN, ROBERT KOLBERT, STANLEY SCHWARTZ, SAMUEL WEISMAN, HAROLD LASSOFF, MARTIN POTH, EDWIN LAYNE, IRWIN HYMAN, WILLIAM MCGEE, STEPHEN HAGLER and DAN ANFANG, the defendants herein, and Automated Information Systems, Inc., Michael Hellerman, Murray Taylor, Murray Levine, Robert Angona, Interstate Equity Corporation and Atlantic Securities, named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons known and unknown to the Grand Jury to commit certain offenses against the United States of America, to wit, violations of Title 15, United States Code, Sections 77q(a), 77(x), 78j(b) and 78ff and Rule 10b-5 (17 C.F.R. 240.10b-5) of the rules and regulations promulgated by the United States Securities and Exchange Commission ("Commission") under the Securities Exchange Act of 1934 ("Exchange Act"); and Title 18 United States Code, Section 1341.

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OBJECTS OF THE CONSPIRACY

18. It was part of said conspiracy that the defendants and co-conspirators unlawfully, wilfully and knowingly, in the offer to sell and sale of securities, to wit, the common stock of co-conspirator Automated Information Systems, Inc., by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, would directly and indirectly, (a) employ devices,



schemes and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in light of circumstances under which they were made, not misleading; and (c) engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of the aforementioned securities and upon any and all persons to whom the said defendants and co-conspirators, directly and indirectly, would attempt to sell the aforementioned securities.

19. It was further part of said conspiracy that the defendants and co-conspirators, in connection with the purchase and sale of securities, to wit, the common stock of co-conspirator Automated Information Systems, Inc., would and did, directly and indirectly, use means and instrumentalities of interstate commerce and the mails to use and employ manipulative and deceptive devices and contrivances in contravention of Rule 10b-5 (17 C.F.R. 240.10b-5) of the rules and regulations promulgated by the Commission.

20. It was further part of said conspiracy that the defendants and co-conspirators, having devised and intending to devise a scheme and artifice to defraud, and attempting so to do, would place and cause to be placed in post offices and authorized depositories for mail matter, and would cause to be delivered by mail according to the direction thereon, certain matter to be sent and delivered by the Post Office Department.

#### MEANS OF THE CONSPIRACY

21. Among the means by which the defendants and co-conspirators would and did carry on such conspiracy were the following:

(c) In or about January and February, 1971, defendants STEPHEN ZARDUS, ROBERT SANTIS and THEODORE KOSS agreed that co-conspirators

Murray Taylor and Michael Hellerman would supply defendant STEPHEN ZARDUS with the names of subscribers and the monies to purchase 50,000 shares, of common stock of co-conspirator Automated Information Systems, Inc.

(d) Defendant ROBERT SANTIS and co-conspirator Michael Hellerman agreed that defendant ROBERT SANTIS would pay to co-conspirator Michael Hellerman approximately one half of the proceeds of the underwriting.

(e) In or about February, 1971 and March, 1971, defendants MARTIN ROTH and ERWIN LAYNE and co-conspirators Michael Hellerman and Murray Taylor and others signed stock powers for several certificates issued in the names of subscribers supplied to defendant STEPHEN ZARDUS by co-conspirator Michael Hellerman.

(f) In or about March and April, 1971, defendants THEODORE KOSS, KOSS SECURITIES CORPORATION, and HERBERT SHULMAN, and others traded the common stock of co-conspirator Automated Information Systems, Inc. in the over-the-counter market, while defendant STEPHEN ZARDUS, and co-conspirators Michael Hellerman and Murray Taylor and Interstate Equity Corporation were selling common stock of Automated Information Systems, Inc. through co-conspirator Interstate Equity Corporation.

(g) In or about March and April, 1971, defendants THEODORE KOSS and KOSS SECURITIES CORPORATION purchased shares of the common stock of Automated Information Systems, Inc. from their customers and placed the shares in the firm account; said shares were purchased from these customers below the prevailing market price.

(1) In or about April, 1971, defendants HERBERT SHULMAN, STEVEN ADLMAN and ROBERT KOLBERT met and agreed with co-conspirator Michael Hellerman that defendants HERBERT SHULMAN, STEVEN ADLMAN and ROBERT



KOLBERT would trade and recommend to brokers and investors that they purchase the common stock of co-conspirator Automated Information Systems, Inc.; defendants HERBERT SHULMAN, STEVEN ADLMAN and ROBERT KOLBERT received cash payments.

(k) In or about April, May and June, 1971, defendants MARTIN ROTH and ERWIN LAYNE, and others endorsed checks drawn against the account of co-conspirator Interstate Equity Corporation in the names of persons unknown to them; said checks were then delivered to co-conspirator Michael Hellerman who cashed said checks.

(m) In or about June, 1971, defendants WILLIAM McGEE and STEPHEN HAGLER received cash payments for recommending and influencing others to purchase the common stock of co-conspirator Automated Information Systems, Inc.

22. As a result of the manipulative and deceptive devices enumerated in paragraph 21 hereinabove, the over-the-counter market price of the common stock of co-conspirator Automated Information Systems, Inc. rose from \$1.00 per share to approximately \$5.50 per share.

23. As a result of the manipulative and deceptive devices enumerated in paragraph 21 hereinabove, investors in the common stock of Automated Information Systems, Inc. incurred financial loss.

#### OVERT ACTS

24. In furtherance of the conspiracy and to effect the objects thereof, the defendants committed the following overt acts, among others, in the Southern District of New York:

(a) In or about January, 1971, ROBERT SANTIS and STEPHEN ZARDUS entered the Plaza Hotel, New York, New York.

(b) On or about February 22, 1971, STEPHEN ZARDUS entered the

Pier 52 restaurant in New York, New York;

(c) On or about March 1, 1971, defendant ROBERT SANTIS delivered two cashiers checks payable to "Louis Greenblatt";

(d) On or about April 7, 1971, defendant STEPHEN ZARDUS and co-conspirator Interstate Equity Corporation purchased approximately 1100 shares of the common stock of co-conspirator Automated Information Systems, Inc. from defendants THEODORE KOSS and KOSS SECURITIES CORPORATION for the account of "Sidonie Horner".

(1) On or about May 25, 1971, defendant STEVEN ADLMAN sold 2000 shares of the common stock of co-conspirator Automated Information Systems, Inc.;

(j) On or about June 4, 1971, defendant ROBERT KOLBERT purchased 400 shares of the common stock of co-conspirator Automated Information Systems, Inc. for the account of "K. Chapin";

(k) On or about June 6, 1971, defendant WILLIAM MCGEE received cash;

(l) On or about June 6, 1971, defendant STEPHEN HAGLER received cash;

(o) On or about June 18, 1971, defendant ERWIN LAYNE had a conversation.

(Title 18, United States Code, Section 371).



COUNT TWO    The Grand Jury further charges:

1. From on or about the first day of November, 1970, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants, THEODORE KOSS, KOSS SECURITIES CORPORATION, STEPHEN ZARDUS, ROBERT SANTIS and STANLEY SCHWARTZ and others, unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, the common stock of Automated Information Systems, Inc. by the use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, (a) did employ a device, scheme and artifice to defraud; (b) did obtain money and property by means of untrue statements of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) did engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon purchasers of said securities and other persons whom the said defendants, directly and indirectly attempted to induce to purchase said securities.

2. The allegations contained in paragraph 21 of Count One of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offense charged in paragraph 1 of this count.

3. On or about the dates hereinafter set forth in Count Two, in the Southern District of New York, the defendants, THEODORE KOSS, KOSS SECURITIES CORPORATION, STEPHEN ZARDUS ROBERT SANTIS and STANLEY SCHWARTZ, unlawfully, wilfully and knowingly did use and cause to be used the means and instruments of transportation and communication in interstate commerce and the mails pursuant to and in furtherance of the scheme alleged in paragraph one of this count as hereinafter set forth:

<u>DATE</u> (a)	<u>ADDRESSEE</u>	<u>MATTER</u>
March 2, 1971	Interstate Equity Corp. 44 Grove St. New York, New York	Check for the purchase of 2000 shares of the common stock of Automated Information Systems, Inc.
(b) May 21, 1971	Atlantic Securities 44 Beaver St. New York, New York	check for the purchase of 1000 shares of the common stock of Automated Information Systems, Inc.

(Title 15, United States Code, Sections 77q and 77x; and Title 18, United States Code, Section 2).

COUNT THREE      The Grand Jury further charges:

1. From on or about the first day of November, 1970, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants THEODORE KOSS, KOSS SECURITIES CORPORATION, STEPHEN ZARDUS, ROBERT SANTIS, HERBERT SHULMAN, STEVEN ADLMAN, ROBERT KOLBERT, STANLEY SCHWARTZ, SAMUEL WEISMAN, HAROLD LASSOFF, MARTIN ROTH, ERWIN LAYNE, IRWIN HYMAN, WILLIAM MCGEE, STEPHEN HAGLER and DAN ANFANG, and others, unlawfully, wilfully and knowingly did, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails, use and employ in connection with the purchase and sale of securities, to wit, the common stock of Automated Information Systems, Inc., manipulative and deceptive devices and contrivances in contravention of Rule 10b-5 (17 C.F.R. Section 240.10b-5) of the rules and regulations of the United States Securities and Exchange Commission.

2. The allegations contained in paragraph 21 of Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing the means by which the defendants committed the offense charged in paragraph 1 of this count.

3. On or about the dates hereinafter set forth in Count Three, in the Southern District of New York, said defendants unlawfully,



wilfully and knowingly did use and cause to be used means and instrumentalities of interstate commerce and the mails pursuant to and in furtherance of the scheme alleged in paragraph 1 of this count, by causing orders to purchase the common stock of Automated Information Systems, Inc., to be sent through the mails to the persons hereinafter set forth the matter hereinafter set forth:

<u>DATE</u>	<u>ADDRESSEE</u>	<u>MATTER</u>
(a) March 18, 1971	J. Lepson	Confirmation of purchase of 500 shares of Automated Information Systems, Inc. common stock.
(b) May 3, 1971	Bernard Weber	Confirmation of purchase of 500 shares of Automated Information Systems, Inc. common stock
(c) June 7, 1971	M. Falteich	Confirmation of purchase of 1000 shares of Automated Information Systems, Inc. common stock.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 18 United States Code, Section 2.)

COUNT FOUR      The Grand jury further charges;

1. From on or about the first day of November, 1970, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants, THEODORE KOSS, KOSS SECURITIES CORPORATION and STEPHEN ZARDUS, and others, unlawfully, wilfully and knowingly did, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails effect transactions in, and induce and attempted to induce the purchase and sale of the common stock of Automated Information Systems, Inc., in connection with fraudulent, deceptive and manipulative acts and practices in contravention of Rule 15(c) 2-4 (17 C.F.R. 240.15(c) 2-4) of the rules and regulations of the United States Securities and Exchange Commission.

2. The allegation contained in paragraph 21 of Count One of this

Indictment are repeated and realleged as though fully set forth herein, as constituting and describing the means by which the defendants committed the offense charged in paragraph 1 of this count.

3. The defendants, while participating in the distribution of securities, to wit, the common stock of Automated Information Systems, Inc., on an "all-or-none" basis underwriting did unlawfully, wilfully and knowingly fail to promptly deposit the monies received from the underwriting in a separate bank account, as agent and trustee for the persons who had the beneficial interests in said monies and did fail to promptly transmit to a bank which had agreed in writing to hold all such funds in escrow for the persons who had the beneficial interests therein all such monies received from the underwriting.

(Title 15, United States Code, Sections 78o(c)(2) and 78ff; Title 18, United States Code, Section 2.)

COUNTS FIVE THROUGH ELEVEN. The Grand Jury further charges

1. From on or about the first day of November, 1970, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, the defendants, THEODORE KOSS, KOSS SECURITIES CORPORATION, STEPHEN ZARDUS, ROBERT SANTIS, HERBERT SHULMAN, STEVEN ADLMAN, ROBERT KOLBERT, STANLEY SCHWARTZ, SAMUEL WEISMAN, HAROLD LASSOFF, MARTIN ROTH, ERWIN LAYNE, IRWIN HYMEN, WILLIAM MCGEE, STEPHEN HAGLER, and DAN ANFANG, and others, unlawfully, wilfully and knowingly did devise and intend to devise a scheme to defraud purchasers of the common stock of Automated Information Systems, Inc., and to obtain money and property from said persons by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme and artifice to defraud and attempting so to do, did place and cause to be placed



in post offices and authorized depositories for mail matter and did cause to be delivered by mail, according to the directions thereon, certain matter to be sent and delivered by the Post Office Department, as more particularly set forth below.

The allegations contained in paragraph 21 of Count 1 of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offense charged in Paragraph One of these counts.

3. On or about the dates hereinafter set forth in Counts five through Eleven in the Southern District of New York and elsewhere, said defendants unlawfully, wilfully and knowingly did cause to be placed in post offices and authorized depositories for mail, and did cause to be delivered by mail by the Post Office Department according to the directions thereon, to the persons hereinafter set forth, the matter hereinafter set forth.

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>	<u>MATTER</u>
5	April 21, 1971	Jackie Mason	Confirmation of purchase of 600 shares of Automated Information Systems, Inc. common stock
8	June 4, 1971	K. Chapin	Confirmation of purchase of 400 shares of Automated Information Systems, Inc. common stock
11	June 11, 1971	H. Zankel	Confirmation of purchase of 200 shares of Automated Information Systems, Inc. common stock.

(Title 18, United States Code, Sections 1341 and 2.)

COUNT THIRTEEN

The Grand Jury further charges:

1. On or about June 15, 1971, in the Southern District of New York, the defendant THEODORE KOSS, in a matter within the jurisdiction of the United States Securities and Exchange Commission, did unlawfully, wilfully and knowingly make and use and submit false

writings and documents to said United States Securities and Exchange Commission knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, documents reflecting purchases and sales of the common stock of Automated Information Systems, Inc., by and through the brokerage firm of KOSS SECURITIES CORPORATION.

(Title 18, United States Code, Section 1001.)

\_\_\_\_\_  
FOREMAN

\_\_\_\_\_  
PAUL J. CURRAN  
United States Attorney



Hellerman - direct

A Yes, sir.

Q What was that first understanding?

A That I would plead guilty to one count in the stock fraud of the Imperial Investment Corporation and I wouldn't be required to testify for the Government, and I wouldn't be prosecuted for the stock frauds, the additional stock frauds, that I had done up to that point.

Q Mr. Hellerman, did there come a time when you committed the crimes in a stock called Automated Information Systems, Inc.?

A Yes, sir.

Q And that was after you made this understanding with the Government, is that correct?

A Yes it is, sir.

Q And as a result of your committing crimes in Automated Information Systems, Inc., did you reach a new understanding with the Government?

A      Because of the crimes I committed in Automated Information Systems and other crimes after Automated Information Systems my attorneys negotiated a new understanding with the Government for me.

mdrf 28

Hellerman - direct

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1           Q     What was that new understanding?

2           A     Instead of my exposure to jail being a maximum  
3 of two years I had to plead to two different, two additional  
4 indictments, and --

5           Q     Excuse me, Mr. Hellerman. Were those two the  
6 At Your Service Leasing case and the Belmont Franchise?

7           A     Yes, they were, sir. And by pleading to those two  
8 additional cases when I was sentenced by Judge Lasker  
9 my exposure to jail was now six years instead of two years,  
10 which was my first understanding, and on top of that I  
11 now had to testify for the Government where in the first  
12 case I didn't have to testify. In the first understanding  
13 with the Government I didn't have to testify.  
14  
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opl Hellerman-direct

T3

Q So, in other words, Mr. Hellerman, as a result of your committing crimes in connection with the stock of Automated Information Systems, Inc. and other crimes, the government required you to plead guilty to two additional indictments and also testify truthfully in all cases that the government required you to testify; is that correct?

MR. PANZER: Is Mr. Sorkin testifying or Mr. Hellerman testifying?

THE COURT: The witness is perfectly competent to testify, Mr. Sorkin. You just ask questions.

MR. SORKIN: Very well, your Honor.

Q Mr. Hellerman, do you know a man by the name of Murray Levine, L-e-v-i-n-e?

A Yes, sir; I know two Murray Levines. I know Murray Levine, who is a union representative, and I know Murray Levine, a stock broker that worked for Mr. Koss.

Q Do you see Mr. Koss in the courtroom today?

A Yes, I do.

Q Will you please identify him for the Court and the jury?

A The second gentleman on the left with the maroon tie.

MR. SORKIN: May the record reflect the identification of the defendant Koss?

Op2

Hellerman-direct

THE COURT: Mr. Weissberg?

MR. WEISSBERG: Yes, your Honor.

THE COURT: Correct identification.

Q Mr. Hellerman, let me direct your attention to approximately late December of 1970. Did you have a meeting with Mr. Levine?

A Yes, I did, sir.

Q Where was this meeting held?

A At the New Gatsby's Restaurant in New York City.

Q Was anyone else present?

A Yes, sir.

Q Who else?

A Murray Taylor and myself, sir.

Q Did you have a conversation with Mr. Levine?

A Yes, I did, sir.

A Tell the Court and jury, please, what you said to Mr. Levine, what Mr. Taylor said to you and what you said to both those gentlemen? The entire conversation.

MR. HITCHELL: Your Honor, I will make the first objection so that it may be taken subject to connection.

THE COURT: Denied.

Q Please tell us the conversation, Mr. Hellerman.

A Mr. Taylor said that he had arranged this meeting between Mr. Murray Levine, the stock broker, and myself to



1 op3 Hellerman-direct

2 put together a deal, being to sell an underwriting, that  
3 Koss Securities and Teddy Koss were trying to underwrite.

4 And I said to Mr. Levine that I would do the  
5 underwriting in Automated Information Systems and I would  
6 buy the whole 65,000 shares of stock at \$1 a share, which  
7 was the offering price that it was being sold to the public  
8 for, and Mr. Levine said that Mr. Koss had already sold  
9 approximately 15,000 shares of stock, he didn't know the  
10 specific amount, but around 15,000 shares, and he would  
11 have to speak to Mr. Koss to find out if we could finalize  
12 the deal.

13 He would also have to speak to Mr. Santis, Mr.  
14 Robert Santis, who was the president of the company,  
15 Automated Information Systems.

16 Mr. Levine --

17 THE COURT: When is this, December of 1970?

18 THE WITNESS: December of 1970, yes, your Honor.

19 THE COURT: All right.

20 A (Continuing) I explained to Mr. Levine that  
21 the only way I would do the underwriting or sell the  
22 65,000 shares of stock was if I could sell all the stock:  
23 because I wanted a box in the stock.

24 O Excuse me, Mr. Hellerman, could you tell us at  
25 this point what does "box" mean in Wall Street terminology?

1 op4 Hellerman-direct

2 What did you mean by "box"?

3 A When you have X amount of shares of stock, in  
4 Automated Information it was 65,000 shares, in order to  
5 control the box you have to have every single share of  
6 stock. When you have every single share of stock you could  
7 make the market whatever price you want to make it because  
8 no one else has any stock to buy or sell.

9 So, if somebody would sell any stock into the  
10 market, you would know they were selling stock short and  
11 didn't have it to deliver to you so you would be able to  
12 stand there and buy it and you could make the price \$1.10  
13 or 20 cents because you owned every share of stock.

14 I also told Mr. Levine that in order to place  
15 this stock or do the underwriting for Automated Information  
16 or for Koss Securities that I want half the proceeds of the  
17 offering. In other words, if I was 65,000 shares of stock,  
18 then I want half the money, \$32,500 in cash back to myself  
19 as my fee for underwriting the stock.

20 I told Mr. Levine that I would, naturally, give  
21 Mr. Santis a discount for the commission of any other broker  
22 if they were involved; that I wanted to know if Mr. Koss  
23 would give up his stock that he sold and, if he didn't  
24 give up the stock that he sold, that I wouldn't do the  
25 deal.



op5

Hellerman-direct

This was the base discussion at the first meeting.

Q Mr. Hellerman, during the period from approximately January 30th to February 13, 1971, where were you?

A On a cruise.

Q What was the ship?

A The QE II.

Q When you got back from this trip, did you have another meeting with Mr. Levine?

A Yes, I did, sir.

Q Where was that meeting, Mr. Hellerman?

A At the New Gatsby's, the same restaurant that we had the first meeting.

Q Who was present?

A Mr. Murray Taylor, Mr. Levine and myself.

Q Now, tell us, please, what the conversation was at that meeting between you, Mr. Levine and Mr. Taylor.

A Mr. Levine said, he explained to me that he hadn't gotten back to me after the first meeting because Mr. Koss didn't want to go along with giving up his 15,000 shares of stock, but he came to me this time because they weren't able to sell any more stock. They weren't able to sell the other 50,000 shares in the issue and Mr. Santis, the president of the company, needed the money to operate his

op6                      Hellerman-direct

business and they realized that I was the only one that would be able to sell the stock for them and that Mr. Santis had agreed with him, although he wanted to meet me, had agreed with Mr. Levine that I could do the deal.

And I said, fine, on the same conditions and terms that I had set down before; that I have complete control over the 65,000 shares and that I get half the proceeds.

Q     Mr. Hellerman, excuse me, did the name Stephen Zardus come up in conversation?

A     Yes, sir.

Q     Could you tell us, please, in what connection and who mentioned his name?

A     Mr. Murray Levine took out an offering circular, and I had seen an offering circular at the first meeting with just Mr. Koss's name or Koss securities as the underwriter. An offering circular is like a prospectus which tells the public what the stock is all about and how the use of the proceeds are going to be used from the money that is going to be raised and on the front cover of that offering circular, which goes to the Securities and Exchange fo; approval, is the name of the underwriter.

At the first meeting the name of the underwriter was Koss Securities, Teddy Koss's firm.



op7

Hellerman-direct

Now, at the second meeting Mr. Levine took out an offering circular and showed me a flyer attached to the offering circular and that flyer substituted Koss Securities as underwriter with the Interstate Equities Corporation, which was Stephen Zardus's firm, and Mr. Levine told me that the reason he substituted Interstate Equities was because with Mr. Zardus he was sure that any deal we worked out would be kept and as far as Mr Koss was concerned, he couldn't sell any more stock, he had sold 15,000 shares of stock. Mr. Koss agreed with Mr. Levine that he would do whatever Mr. Levine asked him to do to benefit the deal.

He would hold the stock and he wouldn't sell the stock into the market or back-door the stock or anything like that.

Q Mr. Hellerman, did that flyer say that Koss, to your recollection, was substituted or that Interstate was included as the underwriter?

A That Interstate was included as the underwriter.

Q Mr. Hellerman, let me show you what has previously been marked as Defendants' Exhibit A. Is that a copy of what you saw at the New Gatsby's Restaurant to the best of your recollection?

op2

Hellerman-direct

1           A     Well, the first time I saw this offering circular  
2     without this flyer. The offering circular was just Koss  
3     Securities as I explained before.  
4

5           At the second meeting in Gatsby's it was the  
6     same offering circular with the flyer of Interstate  
7     Equities.  
8

9           MR. SORKIN: May I have that back, please.

10          Q     Mr. Hellerman, after this meeting with Mr.  
11     Levine, what, if anything, did you do?

12          A     Well, first -- before we left the meeting I  
13     turned to Mr. Tavlör and I said, "Murray," that was his name,  
14     too, Murray Tavlör, I said, "Do you understand that Mr.  
15     Levine has just told me that the 15,000 shares of stock  
16     that Teddy Koss has possession of, that he will not sell  
17     into the market and he has made an agreement to sell me  
18     back 15,000 shares at \$1.50 within a 60 or 90-day period  
19     so I will have complete control of the 65,000 shares of  
20     stock; that I am going to sell 50,000 less whatever small  
21     amount Interstate Equities is going to sell," which was  
22     about 4000 shares, 4500 shares, "and I will have control of  
23     Mr. Koss's stock by giving him a 50 per cent profit or  
24     paying him \$1.50 for the \$1 stock that was coming out in  
25     the offering within a short period of time so I will have  
   control of the whole 65,000 shares of stock."



op9

Hellerman-direct

Mr. Levine agreed that he would guarantee that, and I told Mr. Levine that he was going to get a percentage of the profit that Mr. Taylor and Mr. Layne and myself were going to make on the deal, and I said, "Murray," no talking to Murray Levine now, I said, "Murray, I realize you don't have the money to make good if I take the stock from \$1 to \$5 and Mr. Koss sells 10 or 15 thousand shares into the market, I realize you don't have \$75,000 to make good your guarantee of the \$15,000 shares, so I am going to take off your percentage of the deal the profit you are supposed to make any stock that Mr. Koss sells into the market," and Mr. Levine agreed to that.

When Mr. Levine agreed to that, we started to sell the stock.

Q Mr. Hellerman, you say you began to sell the stock. How did you sell the stock?

A Well, because of my first agreement with the government, I introduced customers that were going to buy the stock to Murray Taylor and I tried to blame the deal -- I tried to make believe it was Murray Taylor's deal, not mine, so if anything happened with the deal I wouldn't get blamed for it and if I got Murray Levine, from the union, the union man, to come up to the Carriage House in New

op10                      Hellerman-direct

House to buy some stock, I introduced him to Mr. Taylor and I had Mr. Taylor sell him the stock and his friends the stock.

Q        Excuse me, Mr. Hellerman. You mean by sell the stock, offer the stock to him for a price?

A        A price, and make private deals with him as far as the way we were going to sell the stock was, and an example, Mr. Murray Levine from the union came to see Mr. Taylor, I had been sitting in a room and I would say, "If you buy a thousand shares of stock at a dollar, we will guarantee your thousand dollars, that you can't lose your thousand dollars, but we want 50 per cent of the profits of the stock when it is sold at 5 or 8 or 10 and with many of the legitimate people that were put into the offering," that is the kind of relationship or that is the kind of deal we made with them.

Q        Now, of the 50,000 shares, Mr. Hellerman, that Interstate Equities had, do you know all the subscribers who purchased that stock?

A        No, sir.

Q        Approximately how many people in terms of shares that they bought, using the shares, how many shares went to people that you knew of that 50,000?

A        Around 17,000 shares.



1           opll                           Hellerman-direct

2           Q       Now, let me rephrase the question. People that  
3       you knew that bought the stock of the 50,000, how many  
4       shares went to those people?

5           A       About 17,000 shares.

6           Q       Now, Mr. Hellerman, with respect to people that  
7       you didn't know, did they get any shares?

8           A       Yes, sir.

9           Q       How many shares did they get?

10          A       About 28,000 shares plus the 4500 shares that  
11       Mr. Zardus, the president of Interstate Equities, sold,  
12       who I didn't know his people either.

13          Q       Now, you say you didn't know those other people.  
14       Where did those names come from, Mr. Hellerman?

15          A       From the Telephone Book.

16          Q       Could you tell us, please, how that came about?

17          A       Well, we had -- my commitment was to buy or sell  
18       whatever stock was left over of the 65,000 shares. Mr.  
19       Koss had sold 15,000 shares. Mr. Zardus had sold approxi-  
20       mately 4500 shares, 46, 44, I don't remember the exact  
21       figure, so taking 4500 as the figure from 50,000 left about  
22       45,500 shares.

23                       When we sold to legitimate people approximately  
24       17,000 shares, 17,500 shares, that left a balance of 28,000  
25       shares that weren't due yet. So, Mr. Taylor and Mr. Layne

opl2                      Hellerman-direct

and myself made up -- remembering that we were getting 50 per cent of the proceeds back or \$32,500 or \$31,000 after Mr. Koss's commission, we figured we would buy the 28,000 -- I would advance the money, we would buy the 28,000 shares that weren't sold to legitimate people and we would get back \$31,000 when the offering was complete, we would have a few thousand dollars profit and own the 28,000 shares ourselves, but we had to find names to put the 28,000 shares in. So I told Mr. Taylor to go to a Telephone Book and just take the names out and the addresses out and that is the list that I gave to Mr. Zardus to sell that 28,000 shares to.

Q     Now, Mr. Hellerman, do you recall the names of the people that you took or Mr. Taylor took out of the Telephone Book?

A     I might remember some of them, sir.

Q     Tell us who you remember.

A     Floyd Cooper, I think there was a Teitelbaum. I just don't remember the rest of them.

Q     You don't remember any other names?

A     No.

Q     Mr. Hellerman --

MR. SORKIN: May we have this marked, your Honor, as Government's Exhibit No. 4-A for identification. \*\*\*\*



op15

Hellerman-direct

1  
2 \*\*\*\*\* Q Now, Mr. Hellerman, did there come a time when  
3 you met Mr. Santis?

4 A Yes, sir.

5 Q Would you tell us when that was, please?

6 A It was -- it was -- well, it was sometime  
7 between when I got back from the cruise, after I made a  
8 deal with Mr. Levine, from the 15th of February to the 18th  
9 of February, some date in there.

10 Q Where did you meet him?

11 A At Peacock Alley in the Waldorf-Astoria.

12 Q Who else was present?

13 A Mr. Murray Taylor, Mr. Murray Levine, I believe.

14 Q Mr. Hellerman, did you have a conversation with  
15 these gentlemen?

16 A Yes, sir.

17 Q Will you tell us, please, what each of the  
18 parties said and identify them, please, as to who said what?

19 A The meeting was arranged by Mr. Levine so I  
20 could meet Mr. Santis, who was the president of the company,  
21 and at the meeting Mr. Santis said to me that he thought  
22 the price I wanted, meaning half the proceeds of the  
23 offering for myself for selling the stock, was a little  
24 steep, meaning he thought it was too much money I was  
25 charging him.

op16

Hellerman-direct

1  
2 I said, "Well, that's the only way I would do the  
3 deal or I would sell the stock if I got half the money."

4 I promised Mr. Santis that in the future if his  
5 company got off the ground that I would raise him additional  
6 money and I said I was concerned, very much concerned with  
7 Teddy Koss having 15,000 shares; that if Teddy Koss didn't  
8 live up to his agreement and sell me the 15,000 shares at  
9 \$1.50 that I wouldn't have the box in the stock and I  
10 wouldn't be able to sell them or wouldn't be able to raise  
11 additional funds at a later date.

12 Mr. Santis said I shouldn't worry about Mr. Koss;  
13 that although I had never met Mr. Koss at this point, he  
14 had given his word to Murray Levine, the stock broker,  
15 and Mr. Santis said he would make sure that Mr. Koss lived  
16 up to his word of selling me the 15,000 shares at \$1.50.

17 Q Now, you mentioned Mr. Layne earlier, Mr.  
18 Hellerman.

19 A Yes, sir.

20 Q Do you see him in the courtroom today?

21 A Yes, I do, sir.

22 THE COURT: Identification?

23 MR. PANZER: Mr. Layne stood up, your Honor.

24 THE COURT: All right.

25 Q Did you know Mr. Layne at the time?



op17                      Hellerman-direct

A     Yes, sir.

Q     Did you tell him at or about this time about the Automated deal?

A     Yes, sir. Mr. Layne -- well, we had made a deal, Mr. Taylor, Mr. Layne and myself, where we would all be partners in this deal and in my conversations with Erwin --

Q     Mr. Layne.

A     Yes, sir, I am sorry. When I had our conversations I was going to give Murray Taylor, after paying off Murray Levine, the stock broker, for the work he was going to do, and after paying off Stephen Zardus for the work he was going to do and paying off the traders and the stock, Mr. Layne was going to get 25 per cent of the deal, Mr. Taylor was going to get 25 per cent of the deal, and I was going to get 50 per cent of the deal.

Q     Mr. Hellerman, you have identified Mr. Koss and Mr. Layne. Do you know William McGee?

A     No, sir.

Q     Do you know a man by the name of Stephen Hagler?

A     No, sir.

Q     Had you ever met Mr. McGee or Mr. Hagler?

A     No, sir.

Q     Now, Mr. Hellerman, let me direct your attention to the period of time that you referred to, approximately

1 op18 Hellerman-direct

2 February 15 to approximately February 26. Did you have  
3 meetings in various places in New York?

4 A Yes, sir.

5 Q Where did you meet?

6 A Peacock Alley meeting, the first one I told you  
7 about, at Pier 52 Restaurant, at the Waldorf again, at the  
8 Carriage House, the Carriage House in New York that is.

9 Q Let me direct your attention to the meeting at  
10 Pier 52. Approximately how long after your cruise did that  
11 occur?

12 A Well, all the meetings occurred between the 13th,  
13 when I got back, sir, to the 26th, when I gave the money to  
14 Mr. Zardus, so the first meeting with Mr. Levine was like  
15 the 14th, and then with Mr. Santis was the 15th or the 16th,  
16 and then there was another meeting at Pier 52 the next day  
17 or the day after, and then back at the Waldorf on the 26th  
18 when I gave Mr. Zardus the money.

19 Q We are talking about February, 1971?

20 A That is correct, sir.

21 Q Now, let me direct your attention to the Pier 52  
22 meeting, Mr. Hellerman. Could you tell us, please, who  
23 was there?

24 A Mr. Santis, that is Robert Santis, the president  
25 of the company, an attorney, Mr. Pierson, a man by the name



op19 Hellerman-direct

of Robert Angona, Murray Taylor, Stephen Zardus, that is the president of Interstate Equities, and myself.

Q Did you have a conversation with these gentlemen?

A Yes, sir.

Q Could you tell us, please, Mr. Hellerman, what you said and what each of these other gentlemen said and to whom?

A Mr. Santis wanted to know from Mr. Zardus how soon we could close the deal because he needed the money or whatever portion of the money he was going to get.

Mr. Zardus said as soon as I gave him the names and get the rest of the checks or the money for the stock.

I told Mr. Santis it would be a very short time, a couple of days and I would have everything together, the lists and the money and the names to close the deal, and Mr. Santis asked Mr. Pierson, or you can use the word instruct Mr. Pierson --

Q Who was Mr. Pierson?

A Mr. Santis's attorney, would he have everything ready to close the deal, and again I said I will have my end done, you know, in two or three days, but what's going to happen with Koss, and again Mr. Santis assured me and Mr. Pierson assured me not to worry about it, that the stock

op20

Hellerman-direct

that Mr. Koss had sold had to be in an escrow account under the terms of the underwriting.

When you do an underwriting all the money that is raised from potential customers has to go into an escrow account so it can't be mingled or it can't be used by the underwriter for any other purpose except the underwriting and if the stock wouldn't be sold and you had to give back the money to the people, it would be there to give back to the people, and he says, "I'm assuming," this is Mr. Pierson talking now, "that Mr. Koss is not stupid enough to mingle or use underwriting money in his regular business, so don't worry about it, Bob Santis and I will get the \$15,000 from Mr. Koss less his commission."



4 am mdrf 1                      Hellerman - direct

Q     Now, Mr. Hellerman, let me direct your attention  
to the meeting at the Peacock Alley in the Waldorf-Astoria --

THE COURT: Pardon me, what I don't understand  
here is if Mr. Koss had sold the stock and received the  
\$15,000 and put it in the escrow account, how was he going  
to deliver the 15,000 shares to you?

THE WITNESS: Your Honor, you see, the \$15,000  
that Mr. Koss had raised he had sold the stock but the deal  
was -- of course it was a crooked deal, but he had control  
of his customers and he could take his customers out of the  
stock at any time he wanted, so he would take them out at --

THE COURT: Are you saying now the stock Mr. Koss  
sold you, call it Koss' 15,000 shares of stock was stock  
that he had already had his customers by in their name  
and he could just as easily get them to sell it as he got  
them to buy it.

THE WITNESS: Correct, sir.

THE COURT: All right, go ahead.

THE WITNESS: That is the understanding I had.

THE COURT: We will take a recess.

(Recess.)

(In open court.)

(Jury present.)

Q     Mr. Hellerman, was it your understanding that Mr.

A Yes, sir.

Q Did you have a conversation there?

A Yes, sir.

Q Would you please tell us what you said and what each of these gentlemen said, and to whom?

A I made a -- I was talking to Mr. Zardus now, who was president of Interstate Equities, the firm that was the substitute underwriter with Koss on the offering, and I had an envelope full of cash with about \$22,000 in it in cash, and I took the names that Mr. Taylor had taken out of the phone book, plus the nominee names that I had used, my uncle and people that I knew --

Q Let me stop you at this point.

Tell the jury and Court, please, what you mean  
by a nominee name as opposed to a telephone book name.

A I just used my uncle's name and put \$1,000 of \*\*\*\*



1  
2 \*\*\*\* now to approximately February 26th, the time of this meeting,  
3 approximately March 9th and 10th, 1971. Did you have  
4 any conversations with Mr. Santis during that period of time?

5 A Yes, sir.

6 Q Will you tell us please where these conversations  
7 were held?

8 A At the Park Sheraton Hotel, New York, where Mr.  
9 Santis had a room which he had taken when he came into  
10 New York for the closing to receive his money from Interstate  
11 Equities.

12 Q Mr. Hellerman, could you tell us please approximately  
13 how many times you met with Mr. Santis and had conversations  
14 with him?

15 A Two different specific times at the Park Sheraton  
16 Hotel, sir.

17 Q With respect to the first time, would you tell  
18 us who else was present, please?

19 A Murray Taylor.

20 Q Would you tell us please what you said to Mr.  
21 Santis, Mr. Taylor, and what if anything they said to  
22 you?

23 A Mr. Santis wanted to know how he would get the thirty  
24 one thousand some odd dollars out of his company to pay  
25 me my half the fee for the underwriting. I was supposed to

1 get half the 65,000 less the commission that Mr. Koss would  
2 earn on the sale of his 15,000 shares less the commission  
3 that Mr. Zardus would earn on the approximately 4,500 shares  
4 that Interstate had sold, and the figure came to about  
5 \$31,000, and he wanted to know how he would take it out of  
6 his company, because when you file an offering circular  
7 there is a use of proceeds you have to declare to the  
8 Securities and Exchange Commission telling them how you  
9 are going to use the funds that are raised.  
10

11 I explained to Mr. Santis that a lot of money was  
12 going into working capital, and I would give him a phony  
13 name and he could put it in his books that he was buying  
14 a patent, or an option to buy a patent, for X dollars, and  
15 then he could either capitalize it or expense it if the deal  
16 didn't go through, and he would treat it as if he was asked  
17 as the right to buy a patent.

18 I told him I would give him the name to do  
19 that.

20 Q Did you at some point in time give him a name which  
21 to draw the checks or the monies against?

22 A Yes, I did.

23 Q What was the name?

24 A Elias Greenblatt.

25 Q Did you have any further conversation with Mr.



1 mdrf 9

Hellerman - direct

2 Santis in this first meeting?

3 A Yes, sir.

4 I asked Mr. Santis, since he saw me at the previous  
5 meeting at the Waldorf give all this cash to Mr. Zardus,  
6 I said to him that in order for me to promote the stock that  
7 I was going to be short some money and how much money did  
8 he need, did he need all his 31 or \$32,000 that he was  
9 going to get immediately?

10 He said no, he did not need all. Then I said  
11 would he led me an additional \$10,000 besides the \$31,000  
12 he was going to give me so I would have money to start paying  
13 off brokers and start doing it -- raising the price of the  
14 stock, so we can get the stock to a level of a secondary  
15 or get a loan or additional capital for his business,  
16 and Mr. Santis said that he would.

17 Also at that meeting when we were waiting for  
18 everything to close. Mr. Zardus was getting everything  
19 ready to close, we got a phone call.

20 Q Let me stop you at this point. You said every-  
21 thing was getting ready to close. What do you mean by  
22 getting ready to close?

23 What was getting read to close?

24 A Mr. Zardus was trying to get the \$15,000 less  
25 the commission from Mr. Koss, and then give the total

1 check of \$65,000 less the commission to Mr. Santis, or  
2 have Mr. Koss give his check for \$15,000 less the commission  
3 to the company, and Mr. Santis and Mr. Zardus would give his  
4 check of \$50,000 less the commission that was only offering  
5 circular to the company to close the deal. That means  
6 that all the stock would have been sold and the SEC would  
7 have been notified that the stock was sold, and the offering  
8 would have been completed, and the stock would now have a  
9 public market and now start trading.  
10

11 Q In other words, are you saying by close the deal,  
12 in other words, the underwriting is finished and all the  
13 stock has been sold?

14 A That is correct.

15 Q Was there any further conversation at that  
16 first meeting with Mr. Santis?

17 A Yes, sir. While we were in the Park Sheraton,  
18 in Mr. Santis' room, we got a phone call from Mr. Zardus,  
19 and Mr. Zardus told Mr. Santis that Mr. Koss wasn't going to  
20 give him the \$15,000 and wasn't going to close the deal.  
21 Mr. Santis got very angry and he picked up the phone and  
22 he called Mr. Koss at his office, and --

23 Q How do you know he was calling Mr. Koss?

24 A Mr. Santis told me he was calling Mr. Koss.

25 Q Go ahead.



1           A     And Mr. Santis not being in the stock market and  
2     not having very much knowledge in the stock market was  
3     arguing with Mr. Koss and I asked Mr. Santis to give me the  
4     phone and I picked up the phone, Mr. Koss didn't know who he  
5     was talking to, I didn't use my right name, and I said, "I  
6     tell you you better stop fooling around. You are breaking up  
7     a deal and you are starting to be greedy, and why are you  
8     not giving the \$15,000 to Zardus, or however you want  
9     to handle it, why are you stalling to close the deal."

11           I told Mr. Santis, even before he had given me  
12     the phone to speak to Mr. Koss, that -- I said the reason  
13     that Koss is not giving you the \$15,000 is because he  
14     doesn't have it, he mingled that escrow, what is supposed  
15     to be escrow funds with his regular funds to run the  
16     business, because a lot of over-the-counter dealers when they  
17     run short do that. Otherwise when he is making a 10  
18     per cent commission on a 15,000 shares he would want to close  
19     the deal to take the \$15,000 out of the escrow account into  
20     his own business.

21           Mr. Santis looked at me and said he better not  
22     have done that.

23           Q     What did Mr. Koss say to you on the telephone?

24           A     I was angry and talked loud to him, in fact  
25     screamed at him and he screamed back and I told him if he

1 didn't give the \$1,000 back I'm going to break his legs.

2 He said back, I don't care how I am going to  
3 break your leg, I am just not doing it.

4 Mr. Santis got back on the phone and said Teddy ,  
5 forgetting how you just spoke to me, you know I am very  
6 capable, meaning because Teddy knew that Mr. Santis was a  
7 judo expert, a karate expert, he said don't mess up my  
8 company and don't mess up my deal. You owe \$5,000, you  
9 sold the stock, and I want to get paid for that stock.

10 Then Teddy Koss calmed down and he said to me when  
11 I got back on the phone that he was going to go to his  
12 lawyer, he was waiting for a transmittal letter, which  
13 I don't know what it was at the time, and he said that he  
14 would go to his lawyer and get everything straightened out,  
15 and that was the end of the conversation.

16 Q You mentioned the name Louis Greenblatt?

17 A Yes, sir.

18 Q As being a fictitious name that you made up?

19 A Yes, sir.

20 Q You gave that name to Mr. Santis, is that correct?

21 A Yes, sir.

22 Q Did you get paid any monies by Mr. Santis, and  
23 how was that arranged?

24 A At the next meeting, which was the next day,



1 or the day after, Mr. Koss called the Park Sheraton, and  
2 he was at his lawyer's office when he called, and he said,  
3 he spoke to Mr. Santis, and he spoke to me, again still  
4 not knowing who I was, and he said, "I am getting everything  
5 ready to close, and I'll straighten it all out with Mr.  
6 Santis."  
7

8 I don't know even now if Mr. Koss gave the \$15,000  
9 directly to Mr. Santis or he gave it to Mr. Zardus to  
10 give to Mr. Santis in the closing, but Mr. Santis wrote two  
11 checks made out to Louis Greenblatt, which was a fictitious  
12 name I gave him, and told him that he could charge it  
13 off to buying a patent or a patent option, one for \$10,000,  
14 and one for \$11,000.

15 Q Drawn against what account, Mr. Hellerman?

16 A Automated Information account.

17 Q What did he do with those checks?

18 A I gave them to Mr. Murray Taylor, and I told  
19 Mr. Taylor to go to Boston with Mr. Santis and either get  
20 the checks certified or get cashier's checks for them  
21 because when he came back to New York with them I wanted  
22 to bring them to a check casher, wanted Mr. Taylor to  
23 bring them to a check casher to get them cashed.

24 That's the reason we only took \$21,000 on the  
25 first two checks because Mr. Zardus -- Mr. Santis said that

he would like to leave a little balance in the account of his bank so his bank will issue cashier's checks or certify the checks when he takes Mr. Taylor up to Boston.

Q To your knowledge, Mr. Hellerman, did Mr. Taylor go to Boston with Mr. Santis?

A Yes, sir, he did.

Q Did Mr. Taylor receive checks payable to Elias Greenblatt?

A He received checks. I don't know who the checks were payable to, but he received either certified or cashier's checks, checks accepted by the check casher.

Q Who was the check casher?

A A man by the name of Mr. Irving Lazarus on 47th Street in New York.

Q Mr. Hellerman, were the checks, to your knowledge, that Mr. Taylor got in Boston, cashed at Mr. Lazarus'?

A Yes, sir.

Q And did you receive the proceeds?

A Yes, I did, sir.

Q What did you do, if anything, with the proceeds?

A Well, Mr. Taylor and I had some expenses in setting up the deal, and I gave Mr. Taylor some money to cover his account, because he had used \$6,000, he had wrote checks for \$6,000 for the closing, and I gave him X dollars in



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Hellerman - direct

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expenses, I don't remember if it was 8 or \$9,000, like that, and we used the money in proceeding with the deal, in making the stock.

Q Did you give any of those monies to Mr. Layne?

A Yes, sir.

Q During the course of this deal, did you give monies to Mr. Layne on various occasions?

A Yes, sir.

Q Where?

A At the Carriage House in New York, at my house, at restaurants, in front of the Carriage House. Many places. We were together every day during the deal.

Q Did there come a time, Mr. Hellerman, when you received an additional amount of money from either Mr. Santis or Automated Information Systems?

A Yes, sir.

Q Could you tell us, please, when that was, and the circumstances surrounding that payment?

A Approximately a week later Mr. Santis said he would give us the other \$20,000, and I had Mr. Taylor meet him and I told him to take the checks or pick up from Lazarus -- to cash the checks and pay Mr. Lazarus his one per cent and take the difference.

I don't know how it was arranged but Mr.

1 Taylor went to Lazarus and picked up nineteen some odd  
2 thousand and brought that to me.  
3

4 Q Did you have a conversation with Mr. Zardus about  
5 the stock certificates of Automated Information Systems?

6 A Yes, sir.

7 Q What did you tell him?

8 A I told Mr. Zardus -- that's the president of Inter-  
9 state Equities Corporation -- that when the stock was closed  
10 that he should write a letter to his customers, meaning  
11 the 44,4,500 shares that he sold, and enclose stock powers.  
12 The stock power is an instrument that is attached to the  
13 certificate, in absence of the certificate being signed  
14 directly by the individual, and that gets signature  
15 guaranteed so the buyer knows he is buying an authentic  
16 certificate or an authentic signature on the certificate.

17 I told him to keep all the other certificates, mean-  
18 ing the other, the legitimate people I and Mr. Taylor had  
19 put into the stock, the nominees that I had put into the  
20 stock, and the telephone book people that I had put into  
21 the stock, to hold the certificates in his office, not to  
22 mail them out to the people, because we wanted access  
23 to them, and I would send Mr. Taylor to pick them up when  
24 and if I needed them but at the beginning since he was  
25 going to sell the stock he should keep the certificates in \*\*\*\*



op2

Hellerman-direct

1  
2 \*\*\*\* Q Now, when you got to the Eden Rock, what, if  
3 anything, did you do?

4 A We went back by the pool, we paged Teddy Koss.  
5 We waited about ten minutes and no one came -- answered  
6 the page, and about, I guess it took about 20 minutes,  
7 Mr. Koss appeared.

8 I didn't know Mr. Koss, but he walked over to  
9 us and as he walked over to us, he said, "What can I do  
10 for you fellows?"

11 I said, "If you don't stop fooling around,  
12 I'm going to throw you in the pool."

13 He said, "Don't get excited over here. Please  
14 don't get excited. My wife and kids are here, don't make  
15 a fuss over here, let's go up to my room, we'll talk."

16 So, Mr. Koss, Mr. Taylor and I went up to his  
17 room in the Eden Rock. He had a bottle of liquor and he  
18 offered us a drink and we sat down and I introduced myself  
19 to him.

20 Q Did you have a conversation with him?

21 A Yes, sir.

22 Q Tell us, please, what you said to Mr. Koss  
23 and what, if anything, Mr. Koss said to you and Mr.  
24 Taylor.

25 A I introduced myself. I had never met Mr.

Hellerman-direct

knew who I was.

"There's a 50 per cent profit for you."

the stock."

jiggle mean?

and Exchange Commission.

6 Please continue with your conversation with



1 op4 Hellerman-direct

2 Mr. Koss.

3 A I said, "What do you want, Teddy?" I said,  
4 "First of all, how many shares have you already sold?"  
5 And I said, "I'm going to tell you now, I don't know what  
6 we're going to work out, Teddy, but don't lie to me, tell  
7 me the truth."

8 He said he sold approximately 1200 shares of the  
9 15,000 shares that he had.

10 So, I said, "What do you want to do?"

11 He said, "Well, since I know you're in the deal,  
12 I know what you're going to do with the stock, I know what  
13 you did in Imperial, I know what you did in Belmont, I  
14 know what you did in At Your Service and how you ran up  
15 all those stocks, I want 5000 shares of the stock for my-  
16 self personally."

17 So, I said, "You mean you want to take it from  
18 your customers, at whatever you take it from them is your  
19 business, you want to keep the 5000 shares?"

20 He said, "Yes."

21 I said, "When are you going to get out of the  
22 stock? Are you going to back-door me when the stock is  
23 the highest?"

24 He said, "No."

25 Q Please tell the Court and jury what it means to

1 op5 Hellerman-direct  
2 back-door.

3 A Back-door means when we are supposed to be  
4 partners, Teddy and I, and he's got 15,000, it doesn't  
5 matter the amount, and I've got 50,000, and neither one  
6 of us is supposed to be selling the stock while the stock  
7 is moving up in price and he goes behind my back and sells  
8 out his 15,000 shares, he's back-dooring the stock and  
9 ruining the market on the stock.

10 Q Please continue the conversation.

11 A He says, "No, he'll sell the stock when I sell --  
12 as I sell out my position, he'll sell out proportionately  
13 and he will listen to everything I tell him to do and he  
14 won't do any back-dooring and to let him have 5000 shares  
15 of the stock because he wants to make some money. He  
16 wants, he says he knows it's going to be a big thing and  
17 he can use the money and he wants it."

18 I said, "All right. Are you going to sell me  
19 the balance of the stock as per the agreement you made with  
20 Murray Levine and sell me the balance?"

21 He says, "Yes."

22 We figured out there was a balance of about  
23 8800 shares after the 1200 he sold and he said, yes, he  
24 would sell me that stock at \$1.50.

25 Q How much?



1 op6 Hellerman-direct

2 A \$1.50.

3 Q How much?

4 A About 3800 shares, and he was going to keep 5000  
5 shares, which he would sell out, as I told him, on a sliding  
6 scale all the way out. He was going to keep that for his  
7 own account, he would work it out himself.

8 Q Go ahead.

9 A We shook hands and he said -- I told him I would  
10 keep in touch with him and I would get him out proportionate-  
11 ly. As he had 15,000 shares and we had 50,000 shares,  
12 taking a percentage, it was X percentage of the deal, and  
13 I would take him out and if I sold 3000 shares or 2500  
14 shares, I would take him out of a thousand shares; that it  
15 would work that way.

16 Q Now, Mr. Hellerman, after your conversation with  
17 Mr. Koss, did you begin taking Mr. Koss out?

18 A Yes, sir.

19 Q How did you begin to do that?

20 A Well, I explained to Teddy that I didn't want  
21 the traders, the market-makers on the street, to know that  
22 Teddy Koss had 15,000 shares of stock because if they knew  
23 he had 15,000 shares of stock, this I told Mr. Koss and  
24 Mr. Zardus, then they wouldn't follow the directions that  
25 I was giving them because if the stock was \$5 or \$8 and I

1 op7 Hellerman-direct

2 told them to buy a thousand or two thousand shares of stock,  
3 because no one else had the stock, only us, they wouldn't  
4 be short at that point because they wouldn't know if Mr.  
5 Koss was back-dooring them and selling real stock that he  
6 had bought from his customers.

7 Q What, if anything, did you tell Mr. Koss to do?

8 A I said, "I want you to sell the stock to Inter-  
9 state Equities or Mr. Zardus's firm and then he will sell  
10 them into the market or to the market-makers so the market-  
11 makers wouldn't know that you had a big position in the  
12 stock. They will think only Interstate has the whole  
13 box in the stock."

14 Q When the stock was bought by Interstate, in  
15 whose name was the stock bought?

16 A The Telephone people. Just any names that were  
17 made out, accounts were opened and the stock was bought  
18 in those names.

19 Q Now, did there come a time when you returned  
20 from Florida?

21 A Yes, sir.

22 Q When you returned from Florida did you have a  
23 telephone conversation with Mr. Koss?

24 A Yes, sir.

25 Q Did the names Robert Ancona and Donald Saxon



1 op3 Hellerman-direct

2 come up in that conversation?

3 A Yes, sir.

4 Q Could you tell us, please, what you said to Mr.  
5 Koss and what he said to you and the circumstances surround-  
6 ing these names coming up in conversation?

7 A Well, I had taken Mr. Koss out of approximately  
8 5000 shares of stock within that 10-day period that I was  
9 in Florida and he started to get greedy and he started to  
10 tell me that he was going to bang the market, meaning to  
11 take the balance of the stock that he had, the 8800 shares,  
12 and throw it on the market and ruin the market if I didn't  
13 take him out of the stock faster.

14 At this point the stock was maybe three or four  
15 dollars, it was much higher than the \$1 offering price  
16 and he had a nice profit in the stock and he was using  
17 that as a leverage to say that he wants to get out of the  
18 stock faster.

19 I didn't have the buying power or the customers  
20 to put into the stock fast enough to take Mr. Koss out of  
21 the stock. I had taken him out of 5000 shares in a  
22 relatively short period of time and so I opened up two  
23 accounts.

24 I told him to open up an account for Robert  
25 Angona and an account for Donald Saxon and I told him to

1 op2 Hellerman-direct

2 take 3000, 2000 for Angona and a thousand for Saxon, and  
3 take it out of his trading account or from his customers,  
4 in other words, buy the stock at a price from his customer  
5 and then take that and make the profit, whatever he wants  
6 in between, the one point or two points or three points  
7 for himself or for his trading account --

8 Q Let me interrupt you. Excuse me, Mr. Hellerman.

9 In other words, in order for Mr. Koss to get  
10 out of the stock, you told him to sell the stock to Mr.  
11 Angona and Mr. Saxon, two accounts?

12 A Yes, sir.

13 Q And you would pay for that stock which was in  
14 Mr. Angona's and Mr. Saxon's name?

15 A I told him Mr. Saxon and Mr. Angona would pay  
16 for the stock because when you sell a stock you have seven  
17 days to pay for it. When you buy a stock you have seven  
18 days to pay for it and when you sell it you wait seven days  
19 for your check, so he gave me a week until I would have to  
20 pay Mr. Koss for the stock, but he would be off my back for  
21 that week and I wouldn't have to keep worrying about taking  
22 him out of more stock.

23 Q Mr. Hellerman, when you returned from Florida,  
24 how often in the next few days did you talk to Mr. Koss?

25 A Every day.



1 op10 Hellerman-direct

2 Q How often?

3 A Sometimes three times, sometimes four times,  
4 sometimes five times, sometimes -- every day.

5 Q What was the conversation?

6 A How's the deal going? How high are you going to  
7 take the stock? I've still got my 5000 shares. I took the  
8 other stock from the customers. I got a couple of hundred  
9 shares I've got to sell for a customer, I can't control it,  
10 what shall I do with it? Sell it to Mr. Zardus.

11 In other words, just how high are you going to  
12 take it? How fast are you going to move the stock?  
13 Could I help? I'll try to find a few brokers for you  
14 to put some buy in.

15 He wanted to know if he sold retail some stock  
16 after -- besides the 15,000 at the original price, if he  
17 found some buyers at \$4 and \$5, how much cash under that  
18 table could he earn besides the rest of the money -- could  
19 he earn for selling the stock.

20 Q When you returned from Florida, did you have  
21 a conversation with Mr. Layne?

22 A Yes, sir.

23 Q Did you ask Mr. Layne to do anything with respect  
24 to Mr. Koss?

25 A Yes, I did.

Q What, if anything, did you ask Mr. Layne to do?

A I asked Mr. Layne to go up to Mr. Koss's office and see if Mr. Koss -- how many physical shares Mr. Koss actually had on hand because I thought that maybe he sold more than he had told me he did and Mr. Layne went out with Bernie Weiss to Mr. Koss's office to see Mr. Koss and check on the stock.

Q Did you have a conversation with Mr. Layne after he went to Mr. Koss's office?

A Yes, I did, sir.

Q What, if anything, did Mr. Layne say to you and what did you say to Mr. Layne?

A First, the first conversation I had with him on the telephone, sir, when they called me, Bernie Weiss and Erwin Layne called me from Koss's office and said they would see me later, but there was a lot of stock up here and they were working with Teddy Koss.

Then I saw Mr. Layne and Mr. Layne told me that he was going to act very close to Mr. Koss; that he wanted -- he was going to try to act like Mr. Koss's protector against me; that he was going to -- so he would gain Mr. Koss's confidence and then he could find out everything that Mr. Koss was doing and he would be able to tell me what was going on and he and Bernie Weiss and I thought it was a good



1 op12 Hellerman-direct

2 idea, so he was going to get friendly with Mr. Koss.

3 He said something about having dinner with Mr.  
4 Koss and his wife and I think they did one night and then  
5 that was what Mr. Layne was going to do at that point.

6 Q Now, Mr. Hellerman --

7 MR. SORKIN: Your Honor, I am getting into a new  
8 area. Shall I continue?

9 THE COURT: Keep going.

10 Q Mr. Hellerman, did there come a time after this  
11 conversation with Mr. Weiss and Mr. Layne that you had a  
12 meeting at the Carriage House with Mr. Koss?

13 A Yes, sir.

14 Q Approximately when was that? How many days after  
15 your return from Florida or the telephone conversation?

16 A Four, five, six days, sir.

17 Q Do you remember when you returned from Florida,  
18 the date?

19 A It was a Sunday. I think it was -- I went about  
20 the 8th and it was the following Sunday, so it would be  
21 about the 18th of April, the 19th, something like that.

22 Q Who was present at this meeting at the Carriage  
23 House?

24 A Mr. Layne, Mr. Taylor, Mr. Koss, myself, Mr.  
25 Zardus and I believe Mr. Santis was there.

1  
2 Q Was anyone else to the best of your recollection?

3 A At the start of the meeting or -- Mr. Angona  
4 was there and other people came in at the end of the  
5 meeting.

6 Q Now, Mr. Hellerman, with respect to this meeting,  
7 had you spoken to Mr. Koss earlier?

8 A Yes, sir.

9 Q What did you tell him?

10 A I asked him please come up to the Carriage House.  
11 The reason all these meetings were at the Carriage House,  
12 I was building a restaurant at the Carriage House in New  
13 York and we had a suite, Mr. Taylor and I, at the Carriage  
14 House which we used as an office while we were doing this  
15 deal.

16 Q You mean the deal, Automated?

17 A Automated Information Systems, right.

18 I spoke to Mr. Koss and I said, "I want to make  
19 the arrangements to buy the rest of your stock, to buy your  
20 5000 shares. I want you to come up to the Carriage House  
21 and work out the deal," and so he came.

22 Q Now, when he came to the Carriage House, did you  
23 have a conversation with him?

24 A It wasn't exactly a conversation, it was almost  
25 a raving fight because --



op14

Hellerman-direct

Q Tell us what you said and what Mr. Koss said.

A Mr. Koss had been telling me on the phone that he was going to sell all that stock in the market and ruin the market.

Q When you say "ruin the market," are you referring to depressing the price of the stock?

A Yes, sir.

Q Go ahead.

A Mr. Koss came up to the suite and I started screaming at him and I said, "What have you been doing?"

He said, "Well, let me tell you something, you're not" -- this is Mr. Koss now talking to me -- he said, "You're not taking me out of the stock fast enough and I'm not going to sell you the stock at \$1.50 any more. Now I want \$2.50 for the stock and if you don't give me \$2.50 for the stock, I'm going to sell all the stock on the market again."

So, I said to him, "Well, Teddy, it is very important, what comes first, the chicken or the egg?" I said, "I could sell the stock for you, but I have to have physical possession of the stock to go to the people that I have to go to to get the money to give you."

"Now, are you going to trust me with that stock?"

He said, "No, I'm not going to trust you with

1 op:15 Hellerman-direct

2 the stock."

3 I said, "Are you going to trust Erwin Layne  
4 with the stock?" I said, "After all, Erwin is your buddy."

5 He said, "All right, I'll trust Erwin with the  
6 stock."

7 I said, "I'll give you 0.50 for the stock."

8 And then after he agreed, sitting in the room,  
9 he agrees to sell the stock for \$2.50 and he agrees to  
10 have Erwin go and pick up the stock and he says, "I don't  
11 know, you may take the stock to \$10 and maybe I should get  
12 more. I want to get in on the deal."

13 I said, "You are in on the deal. Teddy. You  
14 didn't lay out a penny for the stock. Your customers  
15 paid a dollar, you took it from them for a buck and a quarter,  
16 a buck and three-quarters, a buck and a half, you're going  
17 to get \$2.50 for the stock, you're making yourself nine  
18 or ten thousand dollars or eight thousand dollars on the  
19 deal, what else do you want?"

20 "All right, all right."

21 Some other people came in the room and that took  
22 his mind off the deal and he said, "Okay, I'll give Erwin  
23 the stock."

24 Q Now, did there come a time when Mr. Layne went  
25 down at your request to Mr. Koss?



op16

Hellerman-direct

1  
2 A Yes, sir.

3 Q Did he return with anything?

4 A Yes, sir.

5 Q What did he return with?

6 A 5000 shares of Automated Information Systems.

7 Q Did you pay Mr. Koss for that 5000 shares?

8 A Yes, I did, sir.

9 Q How much did you pay him?

10 A \$7500.

11 Q Where did you pay him?

12 A The Carriage House. Not at one time, I did not  
13 give him \$7500 at one time. I gave him 2000, I gave him  
14 1500, I gave him 1000, I gave him the original deal that  
15 I had made with him, I gave him a dollar and a half a share  
16 for the 5000 shares of stock.

17 Q Now, Mr. Hellerman, let's go back to the stock  
18 certificates that we discussed earlier. You said earlier  
19 that the stock certificates were at Mr. Zardus's office,  
20 Interstate Equities, for 50,000 shares, sir. Now, did  
21 there come a time when the signatures of the persons to  
22 whom the stock was assigned or subscribed to had to be put  
23 on the stock certificates?

24 A Yes, sir.

25 Q Could you tell us, please, how that was done?

1 opl7 Hellerman-direct

2 A Mr. Taylor, Mr. Lavne, Mr. Roth, Mr. Angona,  
3 anybody that was around the Carriage House --

4 Q Including yourself?

5 A Including myself, just signed names lefthanded,  
6 righthanded, just signed the Telephone Book names or the  
7 nominee names on the back of the certificates.

8 Q Now, did there come a time, Mr. Hellerman, when  
9 those signatures had to be guaranteed in order for the stock  
10 to be transferred?

11 A Yes, sir.

12 Q Did you have a conversation with Mr. Taylor and  
13 Mr. Lavne about that?

14 A Yes, sir.

15 Q Did you give Mr. Taylor anything?

16 A Yes, sir.

17 Q To give to Mr. Koss?

18 A Yes, sir.

19 Q What did you give?

20 A I gave Mr. Taylor \$500 to give to Mr. Koss to get  
21 the stock certificates guaranteed.

22 Q At what firm?

23 A At Schweickart & Company, sir.

24 MR. SORKIN: That is S-c-h-w-e-i-c-k-a-r-t.

25 MR. PANZER: If Mr. Hellerman can't spell, I



op18                      Hellerman-direct

don't know why Mr. Sorkin is testifying.

THE COURT: All right.

Q     Excuse me, Mr. Hellerman, go ahead if you want to finish your answer. You mentioned Schweickart & Company.

A     Mr. Koss had come to the Carriage Company and we sat down at a table in the back of the Carriage House and we explained to Mr. Koss that we needed to get the certificate signatures guaranteed and that we had no place to get them signature guaranteed because we had no working relationship at that point with a member of the New York Stock Exchange firm and an over-the-counter firm wasn't a good enough signature guarantee to be taken on a certificate.

Mr. Koss said, "I can get it done at Schweickart & Company, but it is going to cost you \$500. I have to give the cashier, my friend over there that takes care of it, \$500."

I said, "Will you do it?"

And I gave Murray Taylor the pack of certificates and he made arrangements to meet Murray Taylor the next morning and I gave Murray Taylor \$500 to give to Mr. Koss to get the stock certificates signature guaranteed.

Q     Did there come a time when Mr. Koss went down to Schweickart & Company?

1 op19 Hellerman-direct

2 A Yes, sir.

3 Q Did he get the certificates guaranteed?

4 A Approximately half of them, sir. He came back  
5 and Mr. Taylor brought me back the certificates with  
6 approximately half the signatures guaranteed and half  
7 weren't. Mr. Koss said he couldn't get them all done,  
8 it was too busy, and he would do the balance in a few days.

9 Q How, did Mr. Koss to your knowledge guarantee  
10 the signatures of any of the Telephone Book names?

11 A Yes, sir.

12 Q How did that come about, Mr. Hellerman?

13 A Mr. Koss did business with Schweickart & Company  
14 so Schweickart, in effect, was guaranteeing Mr. Koss's  
15 signature, so when I signed a certificate lefthanded or  
16 Ervin Lavne signed a certificate or Marty Roth signed a  
17 certificate or Murray Taylor or Bob Angona, Mr. Koss would  
18 take that batch of certificates that I gave him, they were  
19 all signed now by Mr. Lavne or myself and Mr. Roth and Mr.  
20 Taylor and Mr. Angona, and he would put his firm's signature  
21 guarantee stamp on it, Koss & Company, and he would sign it  
22 Theodore Koss and when he took those certificates to  
23 Schweickart, Schweickart was guaranteeing Teddy Koss's  
24 signature.

25 They knew Teddy's signature. They don't know



1 op20 Hellerman-direct

2 G.M. Siverberg or John Jones' signature, so they were  
3 guaranteeing Teddy Koss's signature.

4 Q Mr. Hellerman, Koss Securities Corporation was  
5 not a member firm at the time?

6 A No, sir.

7 Q Did Koss Securities Corporation or Mr. Koss's  
8 signature have to be guaranteed?

9 A Yes, sir.

10 Q Did there come a time when Mr. Layne and Mr.  
11 Taylor went to a stamp manufacturer?

12 A Well, I told --

13 Q Is the answer yes or no?

14 A Yes, sir.

15 Q Could you tell us, please, how that came about?

16 A Yes, sir. When Mr. Koss came back only with half  
17 the certificates guaranteed, I told Erwin, Mr. Layne, and  
18 Murray Taylor, that it's going to be ridiculous, that Teddy  
19 Koss is going to hold us up for \$500 everytime we're  
20 going to get certificates transferred, why don't we get  
21 some signature guarantee stamps made.

22 So, Mr. Layne and Mr. Taylor went to a printing  
23 store on 42nd Street and they had three signature guarantee  
24 stamps made up.

25 Q Which three?

1 cp21

Hellerman-Direct

2 A The Manufacturers Hanover, Schweickart & Company  
3 and Bankers Trust Company.

4 Q After those stamps were made, what was done, if  
5 anything, with them?

6 A We used them to guarantee the balance of the  
7 certificates that Mr. Koss had already stamped that he hadn't  
8 gotten stamped by Schweikart & Company and whenever we  
9 needed any --

10 Q Excuse me, please talk a little bit slower for  
11 the reporter's sake.

12 A I am sorry. Whenever we needed any other certi-  
13 ficates guaranteed, we had the stamp so we didn't have to  
14 worry about going to anybody if we signed any one of the  
15 Telephone Book people's names or any one of the nominees'  
16 names that we hadn't told we bought the stock in their name,  
17 we would just put on the stamp, Bankers Trust or Manu-  
18 facturers Hanover or Schweickart & Company and Mr. Layne,  
19 Mr. Roth or myself or Mr. Taylor or myself would just sign,  
20 as if we were an officer, if the name was R. Weber on some  
21 stamp, we signed R. Weber. If it was no name, we would just  
22 make up a name and sign it and it would be like it was a  
23 proper signature guarantee.

24 Q So, in other words, Mr. Hellerman, the Telephone  
25 Book signature name was guaranteed by Mr. Koss and Mr. Koss's

\*\*\*



mdrf pm 1

AFTERNOON SESSION

2:30 p.m.

(In open court, jury not present.)

\*\*\*\*\* THE COURT: Yes, Mr. Weissberg?

I hear you have an application.

MR. WEISSBERG: Yes, your Honor. I had a conversation with Mr. Sorkin in which I requested that records of transactions of Koss Securities Corporation in Automated Information Systems, Inc., which I delivered to Mr. Sorkin pursuant to subpoena, be received in evidence during or preceding my cross examination of the witness Michael Hellerman for my use during such cross examination.

Mr. Sorkin declined on the ground that --

MR. SORKIN: Let me say the reasons why.

MR. WEISSBERG: All right. Mr. Sorkin declined.

MR. SORKIN: Your Honor, the exhibits that Mr. Weissberg turned over to the Government pursuant to the subpoena are confirmations of purchases and sales and order tickets.

These exhibits run in series, and they are going to come in my stipulation. I spoke to Mr. Weissberg about that.

There are 26 confirmations of purchase, approximately 13 -- I'm sorry, approximately 36 confirmations of

1 purchase, approximately the same amount of sale, and approxi-  
2 mately 40 order tickets.  
3

4 We have stipulated these are the records that  
5 Mr. Koss produced, Koss Securities produced, pursuant to  
6 the subpoena and they represent purchases and sales and the  
7 order tickets for the transactions in Automated.

8 Mr. Hellerman, he doesn't even know about the  
9 subpoena. I don't see how the records being introduced  
10 through Mr. Hellerman, he knows --

11 THE COURT: How can they be introduced through Mr.  
12 Hellerman?

13 MR. WEISSBERG: Not through Mr. Hellerman. What  
14 I want to ask Mr. Hellerman is how he explains the differ-  
15 ences between his testimony and the records of transactions.

16 THE COURT: That is your burden, it is not the  
17 Government's burden.

18 MR. WEISSBERG: I want to tell him that the records  
19 are different, having the records in evidence, and ask him  
20 if he has any explanation.

21 THE COURT: As I gather his testimony it is what  
22 he has been told. That is all he can tell you.

23 MR. WEISSBERG: For example, your Honor, to dis-  
24 close in advance, Hellerman testified on direct that he  
25 caused to be purchased through Interstate 5,000 shares  
of Automated from Koss Securities Corporation. \*\*\*\*\*



1 T3AMD1 Hellerman - direct  
2 \*\*\*\*\* Q Now, Mr. Hellerman, do you know a man by the  
3 name of Jackie Mason?

4 A Yes, I do, sir.

5 Q Did you recommend the purchase of the stock of  
6 Automated to Mr. Mason?

7 A Yes, I did, sir.

8 Q Do you know a man by the name of Donald Saxon,  
9 the man you spoke of before?

10 A Yes, I do.

11 Q Did you recommend the stock to him?

12 A Yes, I did, sir.

13 Q To your knowledge, was the purchase by Mr. Koss  
14 in the names of Angona and Saxon which you testified to  
15 earlier ever paid for?

16 A To my knowledge it was not paid for, sir.

17 Q Does the name Gayle Eastman mean anything to  
18 you?

19 A Yes.

20 Q Who is Gayle Eastman?

21 A A telephone book name, one of the names Murray  
22 Taylor picked out from the telephone book.

23 Q Did you ever give any certificates, registered  
24 in the name of Gayle Eastman, to Mr. Koss?

25 A Yes, sir.

1 MD 2 Hellerman - direct

2 Q Could you tell us, please, how that came about?

3 A I don't know exactly if Mr. Koss was short in  
4 stock or he couldn't get the stock in fast enough from the  
5 customer, but he said he needed some stock, and I called  
6 Mr. Zardus and said, "Make sure that Teddy Koss gets the  
7 stock he needs."

8 I was trying to work with him at the time. And  
9 the stock that Mr. Zardus gave him was in the name of  
10 Gayle Eastman.

11 Q Mr. Hellerman, did there come a time you had a  
12 conversation with Mr. Koss about his books and records?

13 A Yes, sir.

14 Q Would you tell us, please, when that  
15 conversation was.

16 A I had many conversations about it, but this was  
17 right in the middle of the deal, I would say May, and  
18 Mr. Koss told me if he was ever called to the SEC --  
19 the deal was starting to get a little sticky, there  
20 wasn't enough buying going into the stock, and Mr. Koss  
21 said if he was ever checked by the SEC, if he was ever  
22 called, he would never know me, he would deny knowing me  
23 if he was ever asked by anybody.

24 He also said that the SEC--for all these years  
25 he was able to stay straight with the SEC because he kept



1 MD 3 Hellerman - direct

2 two sets of books. He said that he had one set that he  
3 and his wife had access to that he knew what he was  
4 doing, and he had one set that in case the SEC came in  
5 to investigate that he had what he would show them.

6 MR. MITCHELL: Your Honor, I ask that it not be  
7 admitted as far as the defendant McGee is concerned.

8 THE COURT: All of this comes in, does it not,  
9 under Count 13?

10 MR. SORKIN: I didn't hear.

11 THE COURT: His objection is it couldn't come in  
12 against his client. It comes in against Koss and Koss  
13 Securities Corporation. The testimony about the two sets  
14 of books is admitted solely against the defendants Koss  
15 and Koss Securities Corporation. It is not to be  
16 considered by you against any of the other defendants  
17 named in this case.

18 Q As a result of the Automated Information Systems  
19 deal, Mr. Hellerman, did you give Mr. Layne any money?

20 A Yes, sir.

21 Q Approximately how much money did you give him?

22 A In round figures -- I can't give it to you  
23 exactly because I was giving him money constantly.

24 Q Approximately.

25 A Around \$6500, \$7000. Somewhere in there.

MD 4

Hellerman - cross

MR. SORKIN: I have no further questions at this time.

CROSS EXAMINATION

BY MR. WEISBERG:

Q On what date for the first time did you have any conversation with any person about the shares of Automated Information Systems, Inc.?

A In December of 1970 at Gatsby's with Murray Taylor and Murray Levine was the first time I heard about Automated Information Systems, sir.

Q On what date did you last have a conversation with any person who participated in what you called the deal involving Automated Information Systems, Inc.?

A I can't give you a date, sir. I can associate it with an event. I was talking to Mr. Layne about Murray Taylor, and Mr. Layne said to me, "I would be very funny if we found out Murray Taylor was a government agent and he was working on this deal with us."

And as it happened, Murray Taylor was a government informatnt at the time. That was during the first Imperial case. I think that I remember -- I can associate that to a date, to a time, I mean, but I don't know the exact date.

THE COURT: Roughly. \*\*\*\*



2 \*\*\*\*

of Automated?

3 A I think the high was between \$5 and \$6, sir.

4 Q When was it that you obtained 5,000 shares of stock  
5 from Theodore Koss?

6 A It was after the meeting in the Carriage House  
7 in New York when I asked Mr. Koss to come to the Carriage  
8 House to discuss how we would get paid for the stock and we  
9 had a big argument and then I asked Mr. Koss if he would  
10 trust Mr. Layne with the 5,000 shares of stock and he  
11 finally agreed to trust Mr. Layne with the 5,000 shares of  
12 stock, and I asked Mr. Layne to please go down and pick up  
13 the 5,000 shares of stock and Mr. Layne brought me back the  
14 5,000 shares and then I paid Mr. Koss the \$7,500 over the  
15 next few days or the next week in periodic payments.

16 THE COURT: When would you say that first payment  
17 occurred?

18 THE WITNESS: Somewhere around April 22nd,  
19 April 25th, around that date.

20 Q And then the next month you talked to Mr. Morvillo  
21 of the United States Attorney's office, isn't that correct?

22 A Approximately May or June, correct, sir.

23 Q What was it that caused you to talk to Mr. Morvillo?

24 A Well, I knew with all the wooden tickets Mr. Layne  
25

1 and Mr. Taylor were putting into the buying of the stock  
2 there was no more power to buy the stock and I knew  
3 that the deal would get in trouble, so to try to protect my-  
4 self I spoke to Mr. Morvillo and told him the whole story,  
5 but I put all the blame on Murray Taylor rather than put  
6 the blame on myself.  
7

8 Q Well, after you talked to Mr. Morvillo, did you  
9 stop pushing the stock?

10 A Well, there was no more buying power. Yes. We  
11 would try to get out of the stock, but you asked me if I was  
12 trying to push the stock up. I wasn't trying to push the  
13 stock up, if I could get out of more shares or make more money  
14 I would have, but I don't -- I can't correlate the date of  
15 talking to Mr. Morvillo if I sold any other stock after  
16 that. I don't believe I did.

17 Q When you talked to Mr. Morvillo, did you also  
18 turn over to him any records?

19 A No, sir.

20 Q Did you have any records to turn over?

21 A I never kept the records. I told you that. Mr.  
22 Taylor kept most of the records. All I was interested  
23 in was knowing how many shares of stock was sold each week  
24 so we would get the proceeds at the end of the following  
25 week.



Q Did you tell Mr. Morvillo that Koss delivered physical stock 7,000 to 8,000 shares to you?

A I don't remember what I told Mr. Morvillo in relation to Mr. Koss, except that he was in the deal, and most of the conversation as I remember --

MR. WEISSBERG: I wish to strike out everything after the words "I don't remember," and I ask that the witness be instructed.

THE COURT: Just don't volunteer anything, Mr. Hellerman.

THE COURT: Yes, sir.

Q Is it possible that you did say that to Mr. Morvillo?

MR. SORKIN: Objection as to form, your Honor.

THE COURT: Overruled.

A I don't know what I said to Mr. Morvillo, sir, as far as relation of how many shares were delivered to Mr. Koss or if I even told him about it.

MR. WEISSBERG: I move to strike out everything after "I don't remember."

THE COURT: Overruled.

MR. WEISSBERG: I ask that certain papers given me, 3500 material, be marked as Defendant Koss' Exhibit for identification.

THE COURT: It doesn't have to be.

MR. WEISSBERG: Very well.

THE COURT: You can use the number that is presently on it.

MR. WEISSBERG: Very well.

Q Look at page 6 of these papers --

THE COURT: Does the witness have a copy of it?

MR. WEISSBERG: No, he does not.

THE COURT: Do you have another copy available for the witness?

MR. SORKIN: Yes, I do, your Honor.

What number is that?

MR. WEISSBERG: Page 6, 3500-D.

Let me show it to you.

MR. SORKIN: I have it. Thank you.

Q On page 6 of the handwritten notes you are holding, look at the fourth and fifth lines from the bottom beginning with the word "Koss".

Do you see that, Mr. Hellerman?

A Yes, sir.

Q Does that refresh your recollection as to what you told Mr. Morvillo?

MR. SORKIN: Your Honor, I object. I think Mr. Weissberg has a difference in whose notes these are.



THE COURT: You are not reading from notes made by this man, you are reading from notes made by somebody else.

MR. WEISS: The question is whether it refreshes his recollection, your Honor.

THE COURT: As to whether he ever said that?

MR. WEISSBERG: As to whether he said that. That was the question.

THE COURT: I will take that.

THE WITNESS: No, it does not, sir.

Q Did you say to Mr. Morvillo --

THE COURT: Wait a second. You can't do it that way.

MR. WEISSBERG: I will withdraw that.

THE COURT: You can just ask him what he did say to Mr. Morvillo, but you can't read from this document. It is not in evidence in front of the jury and get it in that way.

MR. WEISSBERG: I understand that, your Honor, but I can ask him whether he told that to Mr. Morvillo, I believe.

THE COURT: You can ask him if he told something to Mr. Morvillo, yes, but don't hold that in your hand as though you are reading from it.

Q Did you tell Mr. Morvillo that Koss was supposed

to hold 5,000 shares and sell 8,000 shares at 1-1/2?

A No, I told Mr.--

THE COURT: No, just yes or no. Did you tell that to Mr. Morvillo?

Q You didn't say that.

A Will you repeat the question, please?

MR. WEISSBERG: Can I have it read?

THE COURT: Would you read it back.

(Record read.)

A Everything is right except the 8,000 may have been 8,800 or 8,200, but approximate figures, that's the understanding, that was the deal, yes, sir.

Q Look at the writing at the top of page 7 of the 3500 material and --

THE COURT: Nothing inconsistent in that with what the witness has already testified to.

MR. SORKIN: Your Honor, I think there is some confusion as to the 3500 material. Perhaps a side bar might clear it up.

THE COURT: So far we are doing all right, Mr. Sorkin.

MR. SORKIN: Very well.

Q Did you tell Mr. Morvillo that you paid cash to Mr. Koss at the Carriage House?



2 A I don't remember.

3 The Carriage House in New York? Yes, I did.

4 I don't know if I told him that, but I did pay cash to  
5 him at the Carriage House in New York.

6 Q Did you tell Mr. Morvillo that you told Koss  
7 to take 1,500 shares of stock and put it in Angona's name?

8 A I told -- I don't know. I told Koss to put 2,000  
9 shares in Angona's name and I don't remember what I told  
10 Mr. Morvillo. I don't even know if I told him that.

11 Q Did you also tell Mr. Morvillo that you told Koss  
12 to take 1,000 shares and put it in Saxon's name?

13 A I told Mr. Koss to put 1,000 shares in Saxon's  
14 name. I don't remember if I told that to Mr. Morvillo.

15 Q And did you arrange in some way for payment for  
16 this 2,500 shares?

17 A I did not pay for that stock.

18 Q Are you saying, then, that -- I withdraw that.

19 Well, did Koss -- I withdraw that.

20 Do you know whether Koss did, in fact, put 1,500  
21 shares in Angona's name and 1,000 shares in Saxon's name?

22 A I told Mr. Koss to put 2,000 shares in Angona's name  
23 and 1,000 shares in Saxon's name and after --

24 MR. WEISSBERG: I move to strike that out as not  
25 responsive.

Q The question was, do you know?

THE COURT: All he can tell you is what he told Koss to do. He doesn't know whether Koss actually did it.

MR. WEISSBERG: Then the answer is he does not know it.

THE COURT: All right. But I don't think that deserves striking out.

Q Is it your testimony, then, that in addition to the 5,000 shares for which you say you paid Koss, you asked him to make available a different 2,500 shares without paying for it?

A No, sir. My testimony is that --

THE COURT: Wait. "No, sir."

Q I think you said yesterday that the last time you talked to Mr. Koss was sometime in July 1971, is that correct?

A I don't think I said July. I think it would be the end of the deal, which I said June, I believe.

Q In June?

A June. May or June. Whenever the deal ended, which I think was June, and I think that was my testimony yesterday.

Q Tell us now on what date did you last talk to Theodore Koss about the Automated shares deal?



1  
2 A It was the end of the deal in I believe sometime  
3 in June and Mr. Koss was still pushing to get the difference  
4 of the two and a half dollars -- the difference from the  
5 \$7,500 I paid him for the 5,000 shares, he wanted an extra  
6 \$5,000 and he was asking me when he was going to get it,  
7 and that was the last conversation they are having with  
8 Mr. Koss about Automated Information Systems.

9 Q At that time did you tell him that in May 1971  
10 you had talked to Mr. Morvillo and told him about the  
11 activities in the Automated Information Systems deal?

12 MR. SORKIN: Your Honor, that is not his testimony.

13 THE COURT: That is not his testimony. He said  
14 May or June.

15 Q Can you fix definitely the date when you talked  
16 to Mr. Morvillo?

17 A No, sir.

18 Q Is it --

19 A I can tell you where it was, I will tell you  
20 who is present.

21 Q It is not necessary. The Court has ruled on that.  
22 What is the closest you can fix a date as to when  
23 you talked to Mr. Morvillo?

24 A Toward the end of the deal when the deal was going  
25

bad and I would say the end of May, the beginning of June.

Q The end of May, the beginning of June?

A The beginning of June. That would be my best recollection.

Q How long after that did you talk to Mr. Koss?

A Not long, because the deal was over. The deal was down the drain, there was no more buying power and I can't fix the exact date. It was near the end of the deal when I spoke to Mr. Koss and I told him the deal was over, he could do whatever he wanted to do, that he wasn't going to get paid the other \$5,000. I had given him \$1.50 a share which was originally agreed upon before and he made a lot of money on the deal.



Q     Whatever happened to the 1500 shares that you told Koss to put in in Angona's name and the thousand shares --

THE COURT:   The witness said he told him to put in 2000 shares.

Q     -- the 2000 shares you told Koss to put in in Angona's name and the 1000 shares you told Koss to put in in Saxon's name, if you know?

A     My understandings with Mr. Koss -- I told him to put that 2000 shares in in Angona's name and a thousand shares in Saxon's name to stall for time to get an extra week to pay him when he wanted to get out of the stock after I got Mr. Koss out of the first 5000 shares of stock.

THE COURT:   You are repeating a lot of information that you are not being asked.     You are being asked what happened to the 3000 shares.

THE WITNESS:   As far as I was concerned, that was delivered to me.     That was part of the package of the 5000 that when Layne brought me.   As far as I was concerned, what Mr. Koss did with it or how he handled it on his books or anything else, I don't know.

MR. PANZER:   I move to strike as unresponsive.

THE COURT:   I think it is.   He said 3000 was

mcp2

Hellerman-cross

part of the 5000 of Angona. He was asked what happened to the 3000.

Q When you last talked to Theodore Koss did he tell you that he had testified before the Securities and Exchange Commission in New York on June 15, 1971?

A I don't remember if he told me he had testified, sir.

Q Did you tell Mr. Morvillo that you paid Mr. Adlman \$15,000 to \$20,000?

A I might have. I don't remember.

Q Did you tell Mr. Morvillo that you did not remember the meetings before February 1 or 2?

A I don't remember telling him that.

Q Look at page 15 of the notes before you.

MR. SORKIN: Is that 3500-D?

MR. WEISSBERG: D for David.

A Page 15, you said, sir?

Q Just a moment.

THE COURT: You have the wrong page.

MR. WEISSBERG: I am sorry, I have the wrong one. 3500-C, page 1. Have you got a copy of it?

MR. SORKIN: I have copies for the Court.

THE COURT: I have the court copy. Hold it, Mr. Weissberg. Mr. Sorkin, will you give the witness a \*\*\*\*\*



mcp6

Hellerman-cross

\*\*\*\*\*

THE COURT: It doesn't make any difference.

Q How old are you?

A 36, sir.

Q How much formal education have you had?

A College education.

Q By 1971 how much experience had you had in the securities business by way of employment or as a principal?

MR. WEISSBERG: I withdraw the question. I have no more questions.

THE COURT: Mr. Mitchell.

CROSS EXAMINATION

BY MR. MITCHELL:

Q Mr. Hellerman, at the time of the Automated deal you were trying very much to see that nobody learned of your part in the Automated deal; is that right?

A Yes, sir.

Q In addition to the usual secrecy in the deals you had the feeling that the United States Attorney might find out, after you had promised him to stay out of the securities business, that you went back in; is that right?

A Not so much that, sir. I already made my first agreement with Mr. Morvillo. I was a government informant and I told Mr. Morvillo that if I didn't act like I was in this deal that people would think something

mcp7

Hellerman-cross

was wrong, that Michael Hellerman was not doing any deals. Mr. Morvillo told me that I could watch the deal and not to do anything wrong in the deal, not participate, just watch it, and if I did anything wrong I would be prosecuted for it, and it was my greed that made me make money out of the deal.

MR. SORKIN: I am going to ask several defense counsel and defendants not to smile or smirk at Mr. Hellerman's testimony when he refers to certain discussions that he had with Mr. Morvillo.

THE COURT: All right.

Q Did you tell Mr. Morvillo that you were breaking your word and you were participating in a deal?

A No, I did not.

Q Did you report to Mr. Morvillo that the deal was going on?

A Yes, sir.

Q Did you give him the names of the people who were in it?

A Yes, sir.

Q When did you make that report?

A At the end of May, beginning of June.

Q Of what year?

A 1971, sir. \*\*\*\*\*



gp3

Zardus-direct

1 gp3 Zardus-direct  
2 \*\*\*\*\* Q By the way, when was the last time you met  
3 either Mr. Hellerman or Mr. Taylor?

4 A I have not seen or talked with them or been in  
5 contact with them since May of 1971.

6 Q Did you receive a telephone call from Murray  
7 Taylor the day after you met him and Mr. Hellerman at Pier  
8 52?

9 A Yes, I did.

10 Q What did Mr. Taylor say?

11 A He aske me to meet him at the Peacock Alley  
12 Lounge in the lobby of the Waldorf-Astoria and he would  
13 have the names for me.

14 Q Did you go there to meet him?

15 A Yes, I did.

16 Q Who else was there at that meeting with Murray  
17 Taylor at the Peacock Alley of the Waldorf Hotel?

18 A Murray Taylor, myself, Michael Hellerman and  
19 two or three other gentlemen who I was never introduced to.

20 Q Was Mr. Santis there?

21 A He may have been.

22 Q What happened at your meeting with Murray Taylor  
23 at Peacock Alley?

24 A Well, after we had a drink together at the table  
25 at Peacock Alley, he asked me to come over to a little lobby

1 gp4

Zardus-direct

2 there, a portion of the lobby where there were a series  
3 of telephone booths. He said, "Now, copy down these  
4 names." He dictated names and addresses to me and the  
5 number of shares that each person wanted. He told me to  
6 get out a prospectus, a subscription agreement and a con-  
7 firmation to each one of these people as soon as I could  
8 because they were expecting it. They had already been  
9 told that the stock was going to be a good stock to buy.  
10 So I copied down the names. I asked him for the list and  
11 he wouldn't give it to me, so I copied them down and that  
12 was what took place.

13 Q Approximately how many shares were accounted for  
14 by the names that Murray Taylor gave you at Peacock Alley?

15 A The list was incomplete. I would say, oh,  
16 somewhere around 25 to 28 thousand shares were accounted  
17 for on that list.

18 Q Did Mr. Taylor say anything about taking care  
19 of the rest of the shares?

20 A Yes. He said he would call me tomorrow, meaning  
21 the next day, and that he would give me the additional  
22 names over the telephone.

23 Q After meeting Murray Taylor at Peacock Alley,  
24 what did you do?

25 A I went back to my office in order to start



1 gp5 Zardus-direct

2 preparing the prospectus mailing and I called Ted Koss to  
3 tell him the good news; that we were going to have a  
4 successful offering; that Bob Santis had contacted a  
5 corporate and financial public relations man by the name  
6 of Murray Taylor, who was associated with a very bright  
7 guy by the name of Mike Hellerman, and that they were going  
8 to supply us with the people who were going to buy all  
9 the shares.

10 Q Did Mr. Koss say anything when you told him that?

11 A He said that was great, and he said to keep on  
12 working on it and get the job done.

13 Q Did you say anything to Mr. Koss about the  
14 money being made for this underwriting by Hellerman and  
15 Taylor?

16 A Oh, yes, I did mention to him that the only way  
17 that we got the thing completed, I explained the details  
18 and the agreement that Santis and I had; that I was not  
19 going to make the full commission because Santis had to  
20 kickback half of the proceeds of the sale of the shares  
21 of stock, so that I had agreed with Santis to take only  
22 \$1500 and that I would be satisfied to take that.

23 Q Did Mr. Koss say anything when you told him  
24 that Hellerman and Taylor were going to get half the  
25 proceeds of the underwriting?

gp6

Zardus-direct

A No.

Q Did you receive a telephone call from Murray Taylor the day after you met him at Peacock Alley?

A Yes, I did.

Q What did Murray Taylor say during that telephone call?

A He gave me an additional list of names, amounting, I think, to some 17,000 shares, names and addresses and the number of shares to be applied to each one. He told me that it was getting late and don't bother to send out any prospectuses or confirmations to these people because they were his people; they were clients of his and they would buy or sell anything that he told them to.

Q Mr. Zardus, I show you a document consisting of seven yellow sheets of paper which has been marked Government's Exhibit 10 for identification. Can you identify that document?

A Yes. This is a list of names of purchasers of shares in Automated Information Systems that I made up myself in my own handwriting as the orders came in.

THE COURT: Did these include the names given to you by Taylor?

THE WITNESS: Yes.

MR. WILE: Your Honor, I show this list to \*\*\*\*\*



2 \*\*\*\*\* A Yes, I did.

3 Q Where did you meet him for the first time?

4 A At Koss Securities Corporator.

5 Q Did you have a conversation with Mr. Santis?

6 A Yes, I did.

7 Q Tell us, please, what you said and what he  
8 said.

9 A Mr. Santis told me at that point --

10 Q Please keep your voice up.

11 A Mr. Santis told me at that point that there was  
12 a problem in the placing or the retailing out of the total  
13 offering. He told me about the company, his concept of  
14 running Automated Information Systems and he was on his  
15 way to another firm, Interstate Equities, to co-underwrite  
16 the issue to help finish the offering.

17 Q At or about that time in January did you have  
18 a conversation with Mr. Koss about Automated?

19 A Yes.

20 Q What did you say and what did he say and where  
21 was the conversation held?

22 A It was one night at dinner at a restaurant  
23 close to the office, Bonapart's, and I told him I had an  
24 interest in putting away, or retailing and interesting  
25 other people in the entire 60,000 shares, but I wanted 100

per cent of the selling commission, which was approximately \$6,000.

Q Do you recall how much the offering was?

A 60,000 shares at \$1 a share.

Q What, if anything, did Mr. Koss say in return?

A He turned me down entirely.

Q Was there any conversation about Mr. Koss selling the stock to his customers?

THE COURT: Pardon me.

MR. SORKIN: Yes, your Honor.

THE COURT: Is it 60 or 65,000 shares?

MR. SORKIN: It's 65, but the witness has testified that his recollection was 60.

Q Was there any conversation, Mr. Levine, as to Mr. Koss selling to his customers?

A Yes. I didn't think he could do it and I told him so.

Q Did Mr. Koss say approximately how much he had sold at that time to his customers?

A If my recollection serves me correctly, it is 15,000 shares.

Q During that month of January '71, did you have a conversation with Mr. Koss about the Automated escrow account?



1 A Yes, I did.

2 Q What did you say to Mr. Koss and what did he  
3 say to you and where was the conversation?

4 A The conversation was on the phone from my home.  
5 At that point I told him if he expected any of my customers  
6 or anything to come into the stock, he had no escrow account  
7 set up for the stock. He was using the money at that point  
8 for the operation of his own business, not as the offering  
9 circular read. I told him it is illegal and it is insane.

10 His answer to me was mind my own business, he runs  
11 his business his way.

12 Q Now, did there come a time during January --  
13 approximately January, or whatever your recollection is --  
14 when you met a man by the name of Murray Taylor?

15 A Yes, I did.

16 Q Did you have a conversation with him?

17 A Yes.

18 Q Where did you have the conversation with him?

19 A The original conversation began in a friend's  
20 office. He told me at that point he was interested in  
21 taking the box of Automated Information Systems. He took  
22 me to lunch at Gatsby's where we met Michael Hellerman.

23 Q Did you have a conversation with Mr. Hellerman and  
24 Mr. Taylor?  
25

1  
2 A Yes, I did.

3 Q Please tell us what each of them said to you and  
4 what you said to them, and identify the parties talking.

5 A I laid out the situation of the close or short amount  
6 of stock in the public's hands, 65,000 shares, and told them  
7 that all but 5,000 shares were sold. I told them a little  
8 bit about the company and the individual running it.

9 Mr. Hellerman at that point said he would have no  
10 interest in the situation unless he could take over the total  
11 box of the stock.

12 Q Tell us, please, what the box means as you under-  
13 stand it.

14 A The total box of the stock is where the man would  
15 own the total of the 65,000 shares with no shares in  
16 any strangers' hands.

17 Q In other words, he would not own it, but he would  
18 know where it was?

19 A He could account for the entire 65,000 shares,  
20 yes, sir.

21 Q What else was said, Mr. Levine?

22 A I told him I could not vouch at that point for  
23 Mr. Koss' relinquishing his customers 15,000 shares and  
24 I had thought at that point that Mr. Santis and Mr. Koss --  
25 he was speaking to Mr. Koss -- can have him agree to the  
relinquishing of the stock he held in his own customers'



accounts.

Q When was the next time you met Mr. Hellerman?

A Approximately a week or two later at the Waldorf-Astoria where I introduced him to Mr. Santis at a breakfast meeting.

Q Who else was present, Mr. Levine?

A Mr. Taylor, myself, Mr. Hellerman, Mr. Santis and Mr. Hellerman's brother-in-law, I don't remember his name.

Q Do you know how it was that Mr. Santis came to be at the meeting?

A I set up the meeting. I asked Mr. Santis to come in.

Q Did you have a conversation with these gentlemen?

A Yes, I did.

Q Tell us, please, what you said and what each of them said, naming the parties speaking.

A After I introduced Mr. Taylor and Mr. Hellerman to Mr. Santis, Mr. Santis then proceeded to tell them about the company.

Mr. Hellerman took an interest by virtue of the small float of the stock. He reiterated to Mr. Santis that he would have no interest in doing it unless he held or his customers held the entire 65,000 shares.

Mr. Santis at that point assured Mr. Hellerman

that he can speak with Mr. Koss and Mr. Koss would relinquish the other 15,000 shares.

Mr. Hellerman at that point named his terms. He wanted 50 per cent of all the money received from the sale of the stock.

Q Did Mr. Santis say anything?

A He was a little taken aback.

Q Who was that?

A Mr. Santis was a little taken aback. After saying it was a little impossible, Mr. Hellerman then told him that the money would be given back to him in periodic times for the operation of his business. Mr. Santis agreed to the deal.

Q Did there come a time in approximately early February, or around about this time, when you had a conversation with Mr. Santis over the telephone?

A Yes, I did.

Q Could you tell us, please, what you said and what Mr. Santis said.

A Mr. Santis at that time told me the stock was going stale, the offering was going stale.

Q Go ahead.

A And can I press the people to start placing the issue, or retailing out the issue so he can have a closing



\*\*\*\*\*

2 took place in the fall of 1970 or the early winter. That's  
3 his statement. Which of course would make it before Koss  
4 ever got into Automated.

5 MR. WEISSBERG: Of course.

6 THE COURT: All right, go ahead.

7 MR. WEISSBERG: I don't understand this.

8 THE COURT: Sometimes you are not supposed to  
9 understand the witness' testimony, Mr. Weissberg.

10 Q In any of your conversations with Mr. Hellerman,  
11 did you say to Mr. Hellerman that you guaranteed to Mr.  
12 Hellerman that Koss will not sell into the market the  
13 15,000 shares that he had sold to his customers?

14 A Will you please repeat that question?

15 MR. WEISSBERG: Can we have it read?

16 THE COURT: Read it back.

17 (Question read.)

18 A To the best of my recollection I said to Mr.  
19 Hellerman I did not make the deal with Koss to return the  
20 15,000 shares, it was done by Mr. Santis.

21 So I could not guarantee what Mr. Koss would do.

22 Q Your answer is then that you did not say that  
23 to Mr. Hellerman?

24 A To the best of my recollection, no, sir.

25 Q In any of your conversations with Mr. Hellerman,

1 rgrf 47

Levine - cross

A98 905

2 did Mr. Hellerman say to you that he knows that you do not  
3 have \$75,000 to make good on a guarantee that Koss will  
4 not sell his 15,000 shares in the market, but that  
5 he will deduct from your share of the profits of the  
6 Automated deal any losses that he incurs in the deal by  
7 Koss' sale of any of his shares into the market?

8 MR. SORKIN: Your Honor, I don't understand the  
9 question.

10 THE COURT: I do.

11 MR. WEISSBERG: Your Honor, that's taken right from  
12 the transcript.

13 THE COURT: Mr. Weissberg, I am overruling the  
14 objection. The question is perfectly clear.

15 A No.

16 Q Did you know what Koss was doing with Automated  
17 after you stopped working for Koss in January 1971?

18 A No.

19 Q Did you tell Hellerman that you did know what Koss  
20 was doing with respect to Automated after January 1971?

21 A I just said I didn't know, sir.

22 THE COURT: That isn't the question.

23 The question is did you ever tell Hellerman  
24 that you knew what Koss was doing. In other words, did you  
25 make up a story? \*\*\*\*\*



JW-1f

Fleisher-Direct

272

1 tape, secured by tape under his shirt. This guise is  
2 capable of transmitting sound and voices about 100 yards  
3 clearly. After that it diminishes in quality.

4  
5 Q Who, if anyone, receives the transmissions  
6 that Mr. Olsberg has on the Kel unit?

7 A Myself and other agents.

8 Q And with respect to the conversations that  
9 were admitted into evidence were you there on each and  
10 every occasion that Mr. Olsberg was transmitting on the  
11 Kel units?

12 A Yes, I was.

13 Q And what, if any, equipment did you have, Mr.  
14 Fleisher?

15 A I was equipped with a tape recorder, cassette  
16 tape, which was either operated off of a Kel receiver,  
17 which is familiar as a handy talking device or the car  
18 radio, depending on the circumstances.

19 This cassette recorder was capable of recording  
20 whatever was transmitted by the body Kel worn by Mr. Ols-  
21 berg.

22 Q Was this recorder set?

23 A Yes, it was.

24 Q And the recordings at all times -- can you tell  
25 us whether or not they were in your custody?

\* \* \*

1 Lp

Santis-direct

A100 1150

2 straight -- Mr. Levine indicated that he could take care  
3 of that.

4 Q Did there come a time when you met a man by the  
5 name of Stephen Zardus?

6 A Yes, I have indicated that.

7 Q Did you meet Mr. Zardus after your meeting with  
8 Mr. Hellerman and Mr. Taylor and Mr. Levine?

9 A Yes, I did.

10 Q Where did you meet him?

11 A I met --

12 THE COURT: This I assume is after Zardus became  
13 a co-underwriter?

14 MR. FORKIN: Yes, your Honor.

15 Q Where did you meet Mr. Zardus again?

16 A I met Mr. Zardus at the Waldorf-Astoria with  
17 Mr. Hellerman and Mr. Taylor, and I believe Mr. Levine was  
18 there as well.

19 Q And when was this, Mr. Santis, do you recall?

20 A This was late February.

21 Q What if anything was said at the Waldorf?

22 A Well, Mr. Hellerman had cash with him and had  
23 a list of names of people who were buying stock and gave  
24 Mr. Zardus specific instructions as to how to proceed  
25 with the purchase of the stock.



1 lp

Santis-direct

A101

1157

2 Q Did you see him give Mr. Zardus anything?

3 A He gave him cash and a list of names.

4 Q Now --

5 THE COURT: Is this in connection with the  
6 original offering of your stock?

7 THE WITNESS: Yes.

8 Q When was the last date, Mr. Santis, that you had  
9 to sell the stock, all 65,000 shares?

10 A It was 90 days after the effective date, which  
11 would be March 2 or March 3, '71.

12 Q Now let me direct your attention to approximately  
13 the first week in March. Did you give anything to Mr.  
14 Zardus? Did you give checks to Mr. Zardus?

15 A He gave me checks.

16 Q I am sorry. Did he give you any checks?

17 A Yes.

18 Q Where did he give you those checks?

19 A He gave me \$48,500 at the Chase Manhattan Bank  
20 in the Wall Street area. I believe it was late February  
21 rather than early March.

22 Q Mr. Santis, let me show you what has previously  
23 been marked in evidence as Government's Exhibit 8-A and  
24 Government's Exhibit 8-B.

25 Would you identify those two documents (handing)?

1 Ep

Santis-direct

A102 1158

2 A (After examining) Yes. These are the checks  
3 that Mr. Zardus gave me.

4 Q What did you do with those checks?

5 A I deposited these checks in the company account,  
6 in a bank in Needham, Massachusetts -- Needham National  
7 Bank.

8 Q I notice on one of these checks -- a check for  
9 \$24,000 is certified, whereas the other one for \$24,500 is  
10 not certified.

11 A That is correct.

12 Q Will you tell us why that was?

13 A That was because some of his funds had cleared  
14 and others had not.

15 Q Now, Mr. Santis, let me show you what has  
16 previously been marked Government's Exhibit 66-C for  
17 identification, and I will ask you to identify this, sir  
18 (handing) -- this is not in evidence. Will you just look  
19 at it and identify it for us?

20 A Yes, this is a deposit slip reflecting the deposit  
21 that I made of \$48,500.

22 Q In which bank?

23 A Needham National Bank.

24 MR. SOPKIN: Your Honor, we offer it in evidence.  
25 I will show it to defense counsel (handing).



1 kp

Santis-direct

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2 MR. MITCHELL: No objection.

3 MR. HUFF: No objection.

4 MR. PANZER: No objection.

5 (Government's Exhibit 66-C received in  
6 evidence.)

7 BY MR. CORKIN:

8 Q Now, Mr. Santis, did there come a time when you  
9 had a conversation with Mr. Hellerman and the name of  
10 Louis Greenblatt came up in the conversation?

11 A Yes. Mr. Hellerman instructed me to send him  
12 a check for \$21,000 made out to Louis Greenblatt.

13 Q Do you know who Louis Greenblatt was, sir?

14 A I do not.

15 Q Had you ever heard the name prior to this time?

16 A I had not.

17 Q Did you send one check or two?

18 A I sent two checks, a \$10,000 check and \$11,000  
19 check.

20 Q Tell us, please, the mechanics of these checks,  
21 how they were prepared.

22 A Mr. Taylor flew up to Boston with me. We went  
23 to Needham National Bank and I procured two bank checks,  
24 \$10,000 and \$11,000.

25 Q Let me show you now what has previously been \*\*\*\*\*

1 lp

A104 1173

2 AFTERNOON SESSION

3 2.15 P.M.

4 (Jury in box.)

5 ROBERT PHILIP SANTIS, resumed.

6 \*\*\*\*\*

THE COURT: Go ahead.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. SORKIN:

9 Q Now I believe you left off, Mr. Santis, you  
10 were discussing the meeting in the Carriage House, the  
11 conversation between Mr. Koss and Mr. Hellerman. Do  
12 you recall anything else that was said during that con-  
13 versation?

14 A Well, Mr. Hellerman's prime contention there  
15 was if it hadn't been for him --

16 MR. MITCHELL: I object to "contention."

17 THE COURT: He said that is what he said.

18 A -- if it hadn't been for Hellerman the deal  
19 would never have gotten off the ground, and that Koss  
20 had better cooperate.

21 Q Did Mr. Koss say anything?

22 A Well, they said a lot -- mostly screaming and  
23 shouting and threats.

24 Q Was there anything else other than what was said  
25 this morning?



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Santis-direct

A105 1174

2 A Mr. Koss said that he would cooperate for a  
3 certain price.

4 Q Mr. Santis, let us go back to the time --

5 THE COURT: Wait a second. Don't leave it in  
6 the air.

7 For what price?

8 Q Did a price come up, Mr. Santis?

9 A I don't recall the exact price.

10 Q Mr. Santis, going back now to the time that you  
11 received the money from Mr. Koss, the \$12,750, on or about  
12 that time did Mr. Hellerman's name come up in the con-  
13 versation with Mr. Koss?

14 A Yes.

15 Q Tell us, please --

16 A Mr. Koss did not know --

17 Q -- what was said.

18 A Mr. Koss did not know of Mr. Hellerman's involve-  
19 ment at the meeting in Mr. Turchin's office in early March,  
20 by the time he gave me the check or thereabouts. He knew  
21 that Hellerman was involved in the deal.

22 Q How did you know that?

23 A We talked about it.

24 Q Tell us what Koss said.

25 A He said he knows Hellerman, he knows his

reputation, he knows he is a stock manipulator.

Q Did he say anything to you about --

THE COURT: What date are you referring to?

MR. SORKIN: Beg your pardon?

THE COURT: What date are you referring to?

Q When did Mr. Koss say this to you?

A I can't be too precise, but it was on or about the time, your honor, that he gave me the check for \$12,000.

THE COURT: That would be March 10th?

THE WITNESS: Thereabouts.

THE COURT: And this is the first time, to your knowledge, that Koss knew that Wellerman was involved?

THE WITNESS: Yes.

Q Did Mr. Koss say anything to you with reference to that?

A He said, "Be careful."

Q Now, did you have a conversation with Mr. Koss between approximately February 15 and the time you gave Mr. Koss -- the time Mr. Koss gave you the money?

A We probably talked once or twice a week.

Q Tell us, please, in substance what Mr. Koss said and what you said.

A To the best of my recollection, we talked in general about what was happening -- I probably asked him



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at each -- at each conference, each call where the 15,000  
shares were.

Q What if anything did Mr. Koss say?

A Well, pretty much what I said before, that he was not going to turn over the stock until he knew who was involved in the deal and what his part would be.

Q Now, did there come a time, Mr. Santis, when you received a check from Mr. Taylor as part-payment for the moneys that Mr. Hellerman was supposed to pay you back?

A. Yes, I did.

Q Would you please look at Defendants' Exhibit D in evidence, and I ask you, sir, if that is the check that you received (handing)?

7 Yes, it is. This check, when I got it from Mr. Taylor, I called the bank in Florida -- I believe that is a Florida bank, by the way -- to determine whether there were sufficient funds to cover it, and there were none.

Q What did you do, if anything, with that check?

A I gave it back to him -- no, wait a minute.  
I think I gave that check to Murray Levine.

Q Now let me show you, Mr. Santis, Government's Exhibit 72-A in evidence. Would you look at that, \*\*\*\*\*

1 rgrf 5  
2 \*\*\*\*\* MR. SORKIN: Why don't we say what we will  
3 stipulate, now, your Honor, and then we will do it in front  
4 of the jury.

5 THE COURT: Okay.

6 MR. SORKIN: Let's take Mr. Weissberg first.  
7 With respect to subdivision (a) of Count No. 2, Mr.  
8 Weissberg and the Government will stipulate that if Mr.  
9 Zardus was recalled, he would testify that he received  
10 checks in the mail totalling approximately \$2,000 which  
11 were mailed to Interstate Equity Corporation for the  
12 purchase of approximately 2,000 shares of Automated on or  
13 about March 2, 1971. Correct, Mr. Weissberg?

14 MR. WEISSBERG: Yes, that is satisfactory. I  
15 told Mr. Sorkin that we do not concede that any such  
16 evidence or this stipulation would make out -- would be  
17 legally sufficient to make out the crime charged as against  
18 the defendants Theodore Koss and Koss Securities Corporation  
19 since this relates only to a transaction with Stephan  
20 Zardus and Interstate Equities Corporation and not a  
21 transaction with Theodore Koss or Koss Securities Corporation.

22 MR. SORKIN: The second stipulation, your Honor,  
23 is Murray Taylor, if called, would testify that he received  
24 a check, Government's Exhibit 65-A in evidence, from  
25 Donald Saxon, that the check was made out to Harris, Upham



for \$20,101.40; that he gave that check to either Robert Angona or another person for delivery to Harris, Upham for the payment of 4,000 shares of Automated Information Systems for the account of Jack Lifschitz.

MR. PANZER: What about who made up the check?

MR. SORKIN: If Mr. Taylor were called he would testify that he did not sign the check, Robert Angona signed the check at his instruction, and either Mr. Angona or somebody else delivered it.

MR. PANZER: What about the numbers of the check and everything else who put that in?

MR. SORKIN: As far as I know and as far as Mr. Taylor knows, he didn't do it. He suspects it was probably Angona, but I can stipulate that whoever made out the check, it was made out at Mr. Taylor's instructions.

MR. PANZER: Why don't we just stipulate that the check was made out at Mr. Taylor's instructions and leave it at that.

MR. SORKIN: No objection. And delivered at Mr. Taylor's instructions to Harris, Upham.

MR. PANZER: Yes.

THE COURT: What else?

MR. SORKIN: That's it, your Honor.

MR. WEISSBERG: We do have one other thing.

1 I also spoke to Murray Taylor in the presence of Mr.  
2 Sorkin and he told us both that beginning in the summer  
3 of 1970 he had agreed to cooperate with the Government in  
4 a conversation with Mr. Morvillo; that in advance of  
5 his indictment, I think it was in the Imperial stock case,  
6 he had agreed to so cooperate with the Government and he  
7 defined cooperation as including giving information to the  
8 Government concerning any crimes involving securities that  
9 he saw; that thereafter there came a time, I think it  
10 was sometime in May, 1971, that he gave Mr. Morvillo  
11 information about his own activities and those of others  
12 including allegedly -- well, we didn't go into details,  
13 but he said he gave information to Mr. Morvillo about  
14 the activities in Automated Information Systems and he  
15 quoted Mr. Morvillo as saying to him, "I told you to watch  
16 it, but to say out of it."

18 Mr. Sorkin and I agreed that we would place  
19 this statement, this summary that I have given in the record  
20 as a basis for my contention on behalf of the defendants  
21 Theodore Koss and Koss Securities Corporation; that that  
22 constitutes entrapment not as an issue of fact or submission  
23 to the jury, but as an issue of law for decision by the  
24 Court, since I contend, and this will come up later on in  
25 the motions, that by his own statement, Taylor was a



1 participant in the crime rather than an agent who merely  
2 presented an opportunity for a defendant to commit a crime.  
3

4 MR. SORKIN: Mr. Weissberg, there is one other  
5 thing that Mr. Taylor did say. Taylor was told when he  
6 spoke to Morvillo back in the summer not to get involved  
7 in any further activities and to stay away from any crimes.  
8 Mr. Taylor did say that he did not abide by those  
9 instructions and got himself involved in Automated and did  
10 not tell Morvillo about Automated and I think he said  
11 June of '71 rather than May. \*\*\*\*\*  
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1 5 am rgrf 1 Walsh - cross

2 \*\*\*\*\* THE COURT: Go ahead.

3 Q From the charts which are in evidence, have  
4 you computed how many shares Koss Security Corporation  
5 bought from its original subscribers to 15,000 shares?

6 A Koss Securities bought from the original sub-  
7 scribers, working off the chart, a total of 2,800 shares.

8 Q From the same charts, have you computed how many  
9 shares the original subscribers of 15,000 shares sold  
10 altogether?

11 A The total number of shares that the original  
12 subscribers sold, meaning stocks tin their own name,  
13 they sold through Koss Securities, 8,200 shares.

14 Q From the charts, have you computed how many  
15 shares --

16 THE COURT: Pardon me, 8,200?

17 THE WITNESS: Yes, your Honor.

18 Q From the charts have you computed how many shares  
19 Koss Securities Corporation bought in the after market?

20 A Working off the chart that is marked Exhibits  
21 3-A through 3-RR, in other words, the order tickets,  
22 the house bought in the after market a total of 4,500  
23 shares up to trade date 5/24, and they bought an additional  
24 4,310 when you go through trade date from 6/25 through  
25 9/22.



1 rgrf 2 Walsh - cross

2 THE COURT: Let's get this straight. Koss  
3 Securities bought in the after market how many shares?

4 THE WITNESS: We wanted the two periods --

5 THE COURT: Up to the date that it broke.

6 THE WITNESS: 4,500 shares, your Honor.

7 THE COURT: After the date -- what is that date,  
8 June what?

9 THE WITNESS: It was the end of June. I don't  
10 remember the exact date.

11 MR. SORKIN: I think it was June 24th, your  
12 Honor.

13 THE COURT: June 24th, the date the stock  
14 broke, and after that an additional --

15 THE WITNESS: 4,310 shares.

16 THE COURT: Go ahead.

17 Q From the same charts have you computed how many  
18 shares Koss Securities Corporation sold in the after market  
19 to brokers, dealers and customers?

20 A We totalled that out to be 3,950 shares.

21 MR. WEISSBERG: I have no further questions.

22 MR. MITCHELL: Your Honor, I have just one or  
23 two questions with this witness. #####

24

25

2 \*\*\*\*\*

his commission and be done with it.

3 But he held back on the \$15,000 and additionally  
4 he held back on the 15,000 shares because as the evidence  
5 shows, even though his customers purchased it, he clearly  
6 controlled it, to wit, the Macher transaction.

7 THE COURT: Let's get to Mr. Weissberg's mathematics  
8 and let's clear that up.

9 MR. SORKIN: Your Honor, with respect --

10 THE COURT: He has given you your mathematics.  
11 I want your answer to his mathematics.

12 MR. SORKIN: Your Honor, I don't agree with his  
13 mathematics. His mathematics show, and we all agree  
14 on this, that 5,000 shares were sold back --

15 THE COURT: He started out with 15,000 shares,  
16 correct?

17 MR. SORKIN: Yes.

18 THE COURT: Your records show that he sold  
19 those 15,000 shares.

20 MR. SORKIN: No, we do not contend that he sold  
21 all 15,000. We contend that he sold 5,000 back to  
22 Interstate.

23 THE COURT: He had 15,000 and you have chart 84  
24 there.

25 MR. SORKIN: You mean he sold the 15,000 in the



2 underwriting? Yes.

3 THE COURT: That's what I am talking about.

4 MR. SORKIN: Yes.

5 THE COURT: So he sold 15,000 shares in the under-  
6 writing.

7 Now, how does he get those 15,000 back, then,  
8 is what Mr. Weissberg is pointing to.

9 MR. SORKIN: He gets it back in a number of ways.  
10 First of all, 5,000 -- with respect to the first 5,000,  
11 your Honor, this 5,000 here, we know that with respect to  
12 John Murphy's thousand of the first 5,000, Murphy  
13 never purchased the stock.

14 So Mr. Koss used Mr. Murphy's name and assigned  
15 the 5,000 shares in Mr. Murphy's name, which is a --

16 THE COURT: All right, so Koss has 1,000.

17 MR. SORKIN: Okay. With respect to Mr. Reisch,  
18 your Honor, there is testimony that Mr. Reisch wanted to se-  
19 and he sold, so that is 500 there. With respect to this  
20 thousand, it was in Mr. Koss' house account. How it got  
21 there we don't know, but he had possession of it.

22 With respect to Rost, Emkay and Berger, one  
23 can only infer that either they wanted to sell as did Mr.  
24 Reisch, or Mr. Koss --

25 THE COURT: Were they names on the original?

1 rgrf 22 KOSS MOTION FOR ACQUITTAL

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2 MR. SORKIN: Yes, they were, your Honor. They are  
3 named on the original issue.

4 Do you want to see that?

5 THE COURT: No. I will take your word for it.  
6 Those are the 2,000 shares that were discussed yesterday  
7 actually.

8 House, Rose, Emkay and Berger add up to 2,000  
9 shares?

10 MR. SORKIN: That is correct. That is 2,000  
11 here. The murphy shares are the thousand Mr. Koss used  
12 Mr. Murphy's name for. The 500 were recommended and the  
13 Stoller, one can only assume it could be one of three  
14 things: Mr. Koss used Mr. Stoller's name, or Mr. Stoller  
15 wanted to sell as did Reisch, or Mr. Stoller was  
16 recommended to sell, as was John Daskalakis.

17 THE COURT: So therefore you have got 3,500  
18 shares accounted for.

19 MR. SORKIN: 1,000, 2,000, 3,000, and the last  
20 4,000 --

21 THE COURT: Who has got that?

22 MR. SORKIN: 1,000, 3,000 for Murphy and these  
23 two 600 make a thousand.

24 THE COURT: I don't understand the purchase and  
25 amount of shares sold. I thought the house sold a thousand



2 Rost only sold 200.

3 THE COURT: The house sells a thousand, Rost,  
4 Emkay and Berger make up a thousand that are sold to  
5 Interstate, 300, 500 and 200.

6 THE COURT: That is a thousand.

7 MR. SORKIN: Murphy is 3,000, and Reisch and  
8 Stoller are 500 each and they make up 4,000.

9 THE COURT: Yes.

10 MR. SORKIN: With respect to the last thousand, Mr.  
11 Koss has a confirmation -- perhaps I can lift this up.  
12 Mr. Koss has a confirmation of 800 shares for Joel Macher  
13 on 4/13/71. Mr. Macher testified that Mr. Koss had told  
14 him that he already sold 800 out, even though Mr. Macher  
15 had never purchased the stock. So we have 800 here for  
16 Mr. Macher as part of the Count 13 charge --

17 THE COURT: We are not talking about Count 13,  
18 Count 1.

19 MR. SORKIN: Okay, it shows 800 here and the last  
20 200, your Honor, is Mr. Jack Sobel. So 800 and 200 makes  
21 the first 5,000.

22 THE COURT: All right, that's 5,000.

23 What about the other 10?

24 MR. SORKIN: We can't speak for the other 10. We  
25 can only speak for 5,000 that Mr. Hellerman sent Mr. Layne

2 down on. The other 5,000, it could very well be that his  
3 customers may still have it, so we can't really speak for  
4 the other 5,000.

5 THE COURT: That 5 that you are giving me all  
6 were transferred into Interstate, weren't they?

7 MR. SORKIN: They were sold to Interstate, that  
8 is correct, your Honor. From Koss to Interstate.

9 THE COURT: That is not the 5,000 he gave Layne,  
10 is it?

11 MR. SORKIN: No, it is not. It is a different  
12 5,000.

13 THE COURT: That is what I am talking about. Where  
14 is that 5,000?

15 MR. SORKIN: Your Honor, with respect to that 5,000 --

16 THE COURT: In other words, where did Koss have  
17 5,000 to give Layne?

18 MR. SORKIN: Well, we know this much, your Honor:  
19 We know that at least 2,500 of it comes from Angona and  
20 Saxon, because Mr. Angona buys 1,500 from Mr. Koss' house  
21 account. We don't know how Mr. Koss got 1,500 into  
22 his house account, but we would be supposing or speculating  
23 that Mr. Koss bought back 1,500 from some of his other  
24 customers.

25 THE COURT: This Angona-Saxon deal, which is 2,500



2 right?

3 MR. SORKIN: That is correct, your Honor.

4 THE COURT: That isn't the 5,000 that is delivered  
5 to Mr. Layne, is it?

6 MR. SORKIN: I believe it is, your Honor. I think  
7 Mr. Hellerman testified that the 3,000, or 2,500 was part  
8 of the Layne Saxon.

9 THE COURT: That is what he said, but I have great  
10 difficulty understanding it mathematically.

11 MR. SORKIN: If I may, your Honor, Mr. Angona  
12 is just a name. Mr. Koss, according to Mr. Hellerman's  
13 testimony, wants out of the stock very --

14 THE COURT: Wait. There are two things here.  
15 The proof is, as I understand it, that Hellerman sends Layne  
16 to Koss and Koss gives Layne 5,000 shares to take back with  
17 him.

18 MR. SORKIN: Yes.

19 THE COURT: The 2,500 to Saxon and Angona can't  
20 be part of that 5,000. I know Hellerman said it was.

21 MR. SORKIN: It can be, your Honor.

22 THE COURT: How?

23 MR. SORKIN: Very simply. Because Saxon and  
24 Angona are just names that Hellerman told Mr. Koss to use.  
25 He told Mr. Koss, "Look, in effect, you take --" I think

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2 he said 3,00 or 2,000 or 1,000, I'm not sure. "You take stock  
3 and put it in their names. It will be our stock, but  
4 put it in their names. Use their names."

5 THE COURT: I thought this was the means of  
6 getting rid of it, in addition to the 5. This was helping  
7 Koss to get rid of his stock in addition to the 5,000 that  
8 he physically gave to Layne.

9 MR. SORKIN: No. This is helping Koss get 5,000  
10 back because Mr. Koss said in the beginning he wanted  
11 to keep 5,000 on his own, and Mr. Hellerman agreed. So now  
12 Mr. Koss has to get back 10,000 to Mr. Hellerman. He does  
13 5,000 through Interstate and now that leaves 5,000  
14 left is done this way:

15 Mr. Hellerman calls up Mr. Koss and he says, "All  
16 right, if I am not taking out fast enough, take some  
17 stock and put it in the names of Angona and Saxon."

18 THE COURT: He taking them out is not the same as  
19 delivering the buy. That is a different 5.

20 MR. SORKIN: If I may, your Honor, I am going  
21 to show you how he gets the stock.

22 MR. SORKIN: Mr. Koss takes 1,500 shares and he  
23 puts it in Angona's name.

24 Now, Angona doesn't exist for Koss' purposes, so  
25 a man by the name of Angona has 1,500 shares.



1 rgrf 27

2 THE COURT: Right.

3 MR. SORKIN: Hellerman doesn't pay for it. He  
4 does the same thing with Saxon. Dugan sells 1,000 shares to  
5 Saxon.

6 THE COURT: Yes.

7 MR. SORKIN: Okay? Now, there is 2,500 shares now.  
8 Saxon and Angona are two names in which 2,500 shares are  
9 sitting in the account.

10 When Mr. Layne goes down to Mr. Koss, 2,500  
11 shares are taken out of their account and delivered to Mr.  
12 Hellerman. Mr. Hellerman then has to pay Mr. Koss for  
13 those 2,500 shares.

14 The thousand -- here is \$4,000 here and 1,500 times  
15 a dollar and a half, whatever the figure is, \$8,000, whatever  
16 the figure comes out to. Mr. Hellerman doesn't pay for  
17 that 2,500 shares. Mr. Koss then gets a check from Taylor,  
18 who gets it from Mason, writes a letter to the NASD and  
19 says, "The proceeds of the check were used --"

20 THE COURT: You are saying the Saxon-Angona  
21 2,500 shares are part of the 15,000 that are delivered?

22 MR. SORKIN: That's correct, and I believe there  
23 is testimony on that, your Honor, from Mr. Hellerman.

24 THE COURT: All right, so that's 2,500. Keep going.

25 MR. SORKIN: Very well, your Honor.

1 THE COURT: What is the date that they fixed Layne  
2 going to get the stock?

3 MR. SORKIN: I believe Mr. Hellerman returned from  
4 Florida on the 18th, your Honor, and I believe he said the  
5 meeting was on the 22nd and he instructed Mr. Layne to go  
6 down after the meeting. There is no evidence that Mr.  
7 Layne went down the day after the meeting. There is evidence  
8 that Mr. Layne went down, but we don't know when.

9 THE COURT: All right.

10 MR. PANZER: Where is the evidence that he went  
11 down; eyewitness evidence that he went down?

12 THE COURT: He told him to go down and the stocks  
13 were brought back to him. Hellerman said that.

14 MR. PANZER: He said he sent him.

15 THE COURT: He said he got the stocks.

16 MR. PANZER: He didn't say from whom.

17 THE COURT: I think it is inferential, Mr. Layne.  
18 The jury can draw that inference. If I tell Mr. Layne to  
19 go get them and then I get the stock, I must assume Mr.  
20 Layne brought it, because Joe Zilch didn't bring it. That's  
21 a fair inference for the jury to draw.

22 MR. SORKIN: Your Honor, with respect to the trading  
23 account, it is impossible to tell which of the remaining  
24 2,500 shares were picked up by Mr. Hellerman.



1 RGP 4 KOSS: SUMMATION

2 Actually -- and I will try to do it from the chart  
3 to try to indicate what Koss sold during this period, and  
4 what he bought -- considering only the ten days or, rather,  
5 the entire period from March 16th through April 18th as  
6 follows: I will take first the purchases by Koss and then the  
7 sales by Koss.

8 The purchases were, March 23rd, 300 bought from his  
9 own customer Friedman.

10 March 24th, 200 bought from his own customer  
11 Macher.

12 April 8th, 300 bought from his own customer Garson.

13 April 8th, 300 bought from his own customer  
14 Braunstein.

15 April 8th, 300 bought from his own customer Howard.

16 And that's all. I haven't got a figure on that.

17 THE COURT: Wait. What about Gearhart?

18 MR. WEISSBERG: Oh, yes. April 13th, 1,000 bought  
19 from his own customer Gearhart.

20 Also, April 14th, 100 bought from his own customer  
21 Darcy.

22 April 14th, 200 bought from his own customer  
23 Daskalakis.

24 April 14th, 100 bought from his own customer  
25 Rostoker.

1 RGP 5 KOSS: SITUATION

2 April 16th, 500 bought from J. Patel, who was not  
3 an original subscriber.

4 I don't read beyond the 16th, because the question  
5 is what did he have available for the 19th, because, even  
6 assuming these transactions on the 19th, which are special --  
7 and I will talk about them -- he could not have had the stock  
8 certificates until some time thereafter because it takes time  
9 to transfer a stock certificate.

10 So if you will just give me a minute to add that up  
11 here --

12 THE COURT: 3,300.

13 MR. WEISSBERG: That he bought.

14 THE COURT: Yes.

15 MR. WEISSBERG: There you have the situation.

16 Now I want to go backwards from this chart and then  
17 the prior one, as follows, as to what Koss sold in the same  
18 ten-day period. Here, I have already indicated the sales  
19 to Interstate Equities, Zardus' firm, amounted to 5,000, so  
20 I am going to leave those out and consider only other sales.

21 On April 16th, Koss sold fifty shares to Fahnestock.  
22 On April 16th, Koss's customer, Karkowski, sold 400 shares  
23 to Fahnestock.

24 On --

25 THE COURT: I am sorry. Wasn't it that Koss sold



RGP 6 KOSS: SUMMATION

and not whether the customer sold?

MR. WEISSBERG: Yes. Perhaps I ought to consider only that, because it is perfectly obvious that sales to firms other than Interstate simply were not available for delivery -- for pick-up by Layne for the use of Hellerman.

THE COURT: My point is, you have already subtracted the 8,200 shares sold by subscribers in the after market. Now you are trying to establish what Koss sold in the after market.

MR. WEISSBERG: Yes. Thank you, your Honor.

I will confine myself only to what Koss himself sold in the after market. Retracing it, on April 16th, Koss sold fifty shares to Fahnestock.

On April 8th, Koss sold 500 shares to Rothchild. That is all on this chart.

Oh, yes. I don't know why I missed that. On the same day, April 8th, Koss sold another 500 shares to Rothchild, which I think so far amounts to 1,050.

MR. SORKIN: That is the first one, Mr. Weissberg.

MR. WEISSBERG: It has got to be that.

MR. SORKIN: I am sorry.

MR. WEISSBERG: Here we see on April 5th, Koss sold 200 shares to Dixon Dolce, a broker. On April 7th --

THE COURT: That's Interstate.

MR. WEISSBERG: That's out. That's all.

How much does that total?

THE COURT: 1,700.

MR. WEISSBERG: L,700.

Now, if I could have a minute to collect myself and do the arithmetic -- no: it's 1,250.

Mr. Koss, who is more familiar with the mathematics and faster -- perhaps he has a quicker brain than I -- he tells me that the net result is that his firm was long, meaning that they owned a net balance of 1,950.

Now, that's all they had, and if that's all they had, then how in the world could Layne go on Monday, April 19th, 1971, and pick up 5,000 shares, actual, physical stock certificates, from Koss' firm? I say to you it's impossible. It could not happen, and, therefore, I think it is a safe thing for you to reason and to make a finding that it did not happen and to draw the necessary consequences from that as to whether you can rely on what Hellerman said as to Mr. Koss' participation in this conspiracy.

Bear in mind also the words of Mr. Koss and the others about the terrific fight between himself and Hellerman, not only once but on several occasions. What could this possibly be about? Well, he did tell us one version, but it was always the same thing: Koss is selling stock into the



market, as you see from all the other brokers that obtained stock from Koss, and Hellerman threatens to break his legs on one occasion.

Using Hellerman's words, "There's a <sup>SCREAMING</sup> ~~raising~~ fight."

And on another occasion, at the Carriage House.

Why was that so? Is it because Koss was cooperating, as these conspirators say, or because he was not cooperating? And yet he was unwillingly in the same boat with them, because they had stock of Automated they wanted to push up. He had stock -- he couldn't get these fancy prices. He was selling it to the market at whatever price he could get. He couldn't get it from them, and he didn't get it even from Hellerman's agent, Sardus, because, bear in mind, coming back now to the 5,000 shares that were sold through Sardus, he said they would be sold at a dollar and a half a share, but look at what happened.

500 shares at 1-5/16ths. That's somewhere around \$1.30 a share. 200 shares at 1-5/16ths, again at \$1.30 a share. 300 shares at 1-5/16ths, again, \$1.30 a share. 1,000 shares at 1-5/16ths, again at \$1.30 a share.

I am not going to take the time -- or maybe I can if I look through here and just read it off to you. I see here 2,000 shares a \$1.50, and Joel Macher, 800 shares at 1-3/8ths. Then I see J. Sobel, 200 shares at \$1.50. Those

RGP 9 KOSS: SUMMATION

were the transactions with Interstate.

So I submit to you if this did not happen, then the relationship of Koss to this conspiracy was not as a co-conspirator but as someone who was being dragged along, and they were always fighting, because Koss was doing what they didn't want him to do, namely, selling his stock and getting out, because he wanted no part of them.

Now, an important thing comes along that has nothing to do with this part of it, but it is very important for you to know, that when the price of the stock dropped between June 22nd and June 24, 1971 -- Can I have that chart, please, the one with the steep drop -- On June 22, 1971, the price was either 5,-1/4 or 5-3/8ths for shares of Automated. It dropped the next trading day to around 4-3/8ths or 4-1/2; then it dropped to 3-7/8ths, and then this steep drop here, to one dollar a share, where it zigzagged up and back somewhere between one and one and a half a share until the last entry is October 29, 1971, where it is shown as "Value Zero".

We have introduced in evidence confirmations of purchases beginning with the day of that steep drop, after that day and continuing until September 22, 1971. The records show that during that time at the market prices shown on that chart, Koss bought 4,310 shares, and, as a result, as shown on the trading ledgers, Trading Ledger Number 2, which is the



complete one, which is also in evidence, Koss had a net loss of \$1,205 on its entire trading account in shares of Automated.

Now, if Koss was a part of this conspiracy to any extent, if he knew that these crooks were rigging the price of this stock, I ask you, would he buy?

There are a great many other contradictions in the testimony which indicate that the testimony could not and cannot be relied upon.

One of the things I want to talk about is this check, which has the writing on there, that I think you will see -- you can take it into the jury room -- "Koss Securities Corp" is written on there.

Let me Read Hellerman's testimony on the subject, if you will just bear with me while I try to find it, beginning at page 202, line 24.

"It was a Friday night, and when this check had to be cashed -- with Murray Taylor and I wanted to cash this check and Lazarus was closed, we couldn't get the cash, and Mr. Koss' bank was open, and Mr. Taylor went with Mr. Koss t-his bank and got this check cashed."

We have stipulated, and the 1971 calendar shows, that Friday night, that a Friday night in April 1971 was Friday, April 14, 1971.

nd

You simply add up from his trading ledger the transactions by his firm trading account buying and selling -- they are not agency, he doesn't do it for a customer, he does it for his own interest -- he buys and sells for his own account -- you add up here the number of sales to his house account -- Friedman, 300 shares; Wacher, 200 shares; Gols, 500; Schweickart, 500, Garson, Brownstein, Howard, all of that -- you add that up and you are going to find that when you add up the buyers Mr. Koss comes out with approximately 5250 shares on April 23rd.

I don't have time, but you add it up and you will see as of April 23rd, some five days after he returns from Florida, and Mr. Hellerman sends Mr. Lavne down to pick up the stock, there's at least 5000 shares sitting in Mr. Koss' account.

THE COURT: Did he sell during that period?

MR. SORKIN: Yes, he sold during that period, and I am accounting for the buys. You subtract what he buys from what he sells, and you are going to come out with about 2750 shares.

I said over 5000, didn't I? Didn't I say over 5000? Well, there's 2750 shares, 2750 shares up to this date. You can add them up yourself. Add them up with the other chart. 2750.



GOVERNMENT: SITUATION

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1 nd

2 Well, how does he possibly have 5000? It's  
3 very simple. He does the flip. Saxon, Angona. He buys  
4 1000 shares from Dugan and puts them in Saxon's account,  
5 but Saxon doesn't have an account there, it is Mr. Koss'  
6 account. He just used the name.

7 And Mr. Angona, we don't know where this 1500  
8 came from, but we know it is in Angona's account. He says  
9 he bought it from the house, but this is the house, and  
10 Angona didn't have an account there. These are two names  
11 Hellerman told him to use.

12 MR. WEISSBERG: There is no evidence to that  
13 effect, your Honor.

14 THE COURT: I'm sorry, that is up to the jury.

15 MR. SORKIN: Angona and Saxon were the two names  
16 given to Mr. Koss by Michael Hellerman. I don't have time  
17 to go over the testimony, as I have done repeatedly here,  
18 but if you want to hear it ask for it.

19 That's 2500 shares. Add that 2500 reflected on  
20 the confirmations which he doesn't show where and you are  
21 going to come out with 2750, with 2500, so you will have in  
22 excess of 5000 shares sitting in his house account as of  
23 April 23, 1971.

24 Just a couple more points I want to show you  
25 ladies and gentlemen. These are the two columns, the blue

1 nd

2 Kolbert.

3 MR. MITCHELL: You put them together in your  
4 summation. You created the impression that the money was  
5 passed over when you knew according to Kolbert's story it  
6 couldn't have happened.

7 MR. SORKIN: I don't know that. I am saying  
8 Mr. Kolbert testified one way, and I say Mr. Kolbert, when he  
9 testified it was after they returned from Las Vegas  
10 is not accurate. I am not calling Mr. Kolbert a liar.  
11 He is wrong. I believe Adlman.

12 If I made an argument to the jury I'd say Mr.  
13 Kolbert made a mistake, that he thought it was afterwards,  
14 but the evidence is clear that Mr. Kolbert got \$1000,  
15 \$500 and another \$500, from Adlman, and Adlman got it from  
16 Taylor, and that the payoffs took place before they went to  
17 Las Vegas. They were partners. They have been called  
18 partners in this.

19 THE COURT: I think it is up to the jury, Mr.  
20 Mitchell.

21 MR. MITCHELL: I wanted to make the point to  
22 protect the record.

23 MR. WEISSBERG: I have an application, your  
24 Honor.

25 I move for a mistrial on the ground that Mr.



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2 Sorkin has addressed to the jury, incorrectly stated to the  
3 jury, that the transaction on April 19, 1971, whereby Mr.  
4 Angona bought 1500 shares from the Koss Securities  
5 Corporation, thereby providing additional shares for the  
6 defendants to use, and thereby made available physical stock  
7 certificates for the defendant to give to Mr. Jayne to take  
8 back to Mr. Hollerman, I think that that is so clearly  
9 illogical --

10 THE COURT: It has always been the government's  
11 contention throughout the whole trial that the Angona-Saxon  
12 deal was part of the 5000.

13 MR. WEISSBERG: Yes, but that is not my point,  
14 however. My point is a simple one. That that transaction  
15 of Angona buying from the house did not put additional  
16 physical stock certificates in. Instead, if it had been  
17 completed by April 23rd it would have taken stock certificates  
18 out, so that that should not be considered.

19 THE COURT: That is up to the jury, and I have  
20 said this, and indicated it during the trial. I don't know  
21 why you let those charts in in the first place, but you were  
22 anxious to have them come in. Mr. Sorkin is entitled to draw  
23 whatever inferences from those charts he wishes, just as  
24 you did.

25 MR. WEISSBERG: I say that is a clear error.

1 md

2 THE COURT: I'm sorry, I don't find it a clear  
3 error. You wanted the charts in, Mr. Weissberg. You didn't  
4 object to them.

5 MR. WEISSBERG: I did, your Honor, when I  
6 started to --

7 THE COURT: You did not. If I ever sent a  
8 message to a lawyer -- you wanted them in, and you admitted  
9 to me in the robing room that you wanted them in, so they  
10 are there.

11 (Adjourned to 2:15 p. m.)



U.S. COURT OF APPEALS:SECOND CIRCUIT

U.S.A.,

Appellee,

against

KOSS, et al,

Defendants-Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Victor Ortega,

being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1027 Avenue St. John, Bronx, New York

That on the 8th day of August 1974 at U.S. Courthouse, Foley Sq., New York

deponent served the annexed

*Appellants' Affidavit*

upon

Paul J. Curran-U.S. Attorney Southern Dist., -Attny, for Respondent

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

Sworn to before me, this 8th

day of

August

19 74

*Victor Ortega*

Print name beneath signature

VICTOR ORTEGA

*Robert T. Brin*

ROBERT T. BRIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 31 - 6118959  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1975

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